Nos. 80-54 and 80-5049

IN THE

Supreme Court of the United States

October Term, 1980

ITT GILFILLAN, a Division of International Telephone and Telegraph Corporation, a corporation,

Petitioner,

vs.

CLIFFORD E. CLAYTON,

Respondent.

CLIFFORD E. CLAYTON,

Petitioner,

vs.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, and UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL NO. 509,

Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit.

JOINT APPENDIX

(Names of Counsel on inside front cover)

Petitions for Certiorari Filed July 11 and 12, 1980.
Certiorari Granted November 3, 1980

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JOINT APPENDIX

	Page
Reference to Omitted Opinions, Findings and Order	1
Chronological List of Relevant Docket Entries	2
First Amended Complaint for Injunction (Reinstatement) and Damages for Breach of Collective Agreement and for Breach of Duty of Fair Representation	3
Answer of ITT Gilfillan to First Amended Complaint for Injunction (Reinstatement) and Damages for Breach of Collective Agreement and for Breach of Duty of Fair Representation	10
Stipulation for Amendment to First Amended Complaint and Order	14
Answer to First Amended Complaint	16
Pre Trial Conference Order	20
Excerpts from Trial Exhibit A — Collective Bargaining Agreement	29
Excerpts from Trial Exhibit B— UAW Constitution	62
Trial Exhibit C — Letter of Ralph S. Gazzigli	78
Excerpts from Trial Exhibit E — Affidavit of Jerry Dale	80
Trial Exhibit F-1 — Decision of Public Review Board — No. 13	89
Trial Exhibit F-2 — Decision of Public Review Board — No. 192	100
Trial Exhibit J — Affidavit of Richard Krolewski	110
Judgment of Trial Court	114
Notice of Appeal	116
Judgment of Court of Appeals	117

The following opinions, findings and order have been omitted in the printing of this appendix because they appear in the appendix to the Petition for Writ of Certiorari filed by ITT Gilfillan (80-54):

Findings of Fact and Conclusions of Law, Filed May 27, 1977.

Opinion, U.S. Court of Appeals for the Ninth Circuit, Filed September 4, 1979.

Order, U.S. Court of Appeals for the Ninth Circuit, Filed April 14, 1980.

Revised Opinion, U.S. Court of Appeals for the Ninth Circuit, Filed April 14, 1980.

Chronological List of Relevant Docket Entries

Date 5/3/76; Filed plaintiff's FIRST AMENDED COMPLAINT.

Date 5/11/76: Filed defendant ITT Gilfillan's ANSWER to first amended complaint.

Date 5/13/76: Filed plaintiff's AMENDMENT to first amended complaint.

Date 6/17/76: Filed defendants UAW International & UAW Local 509's ANSWER to First Amended Complaint.

Date: 2/6/76: Filed plaintiff's Pre-Trial Conference Order returnable, date not given.

Date 12/6/76: Minute Order: Pre-Trial Conference held. Court orders matter set for estimated 11 day Court Trial on 3/1/77, 9:30 a.m.

Date 5/3/77: Minute Order: Court Trial (1st day) swore in witnesses, marked exhibits, continued to 5/4/77, 9:45 a.m. for further trial.

Date 5/4/77: Minute Order: Court Trial (2nd day) Witness continued to testify, continued to 5/5/77, 10 a.m. for further trial.

Date: 5/5/77: Minute Order: Court Trial (3rd day) judgment by court, findings and conclusions of law and judgment to be prepared and lodged by 5/13/77, plaintiff objections to be filed by 5/19/77.

Date 5/27/77: Filed defendants' findings of fact & conclusions of law. Filed Judgment and Order that judgment shall be entered in favor of defendant United Automobile, Aerospace & Agricultural Implement Workers of America, UAW & its affiliated Local 509 & defendant ITT Gilfillan & defendants shall be awarded costs of suit. (Entered 5/31/77).

Date 6/27/77: Filed plaintiffs NOTICE OF APPEAL from Judgment entered on May 31, 1977.

First Amended Complaint for Injunction (Reinstatement) and Damages for Breach of Collective Agreement and for Breach of Duty of Fair Representation

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT Gilfillan, a Division of International Telephone and Telegraph Corporation, a corporation, Defendant. Civil No. 76-0730-IH.

FILED: May 3, 1976.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT ITT GILFILLAN, A DIVISION OF INTERNATIONAL TELEPHONE AND TELEGRAPH CORPORATION, A CORPORATION, PLAINTIFF ALLEGES:

1. This action arises, and jurisdiction of the court is based upon, Section 301 of the Labor Management Relations Act, as amended, 20 USC §185.

2. Plaintiff, CLIFFORD E. CLAYTON, is a citizen and resident of Los Angeles County, State of California; and at all times material herein, plaintiff was a member in good standing of defendant INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, an unincorporated labor organization (hereinafter "International"), and of defendant UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL UNION NO. 509, and unincorporated labor organization (hereinafter "Local 509").

3. At all times material herein, defendants International and Local 509 were, and still are, unincorporated associations and labor unions, formed and existing for the purpose of collective bargaining and of representing the interests of their members, and doing business in the State of California, having a principal place of business in Los Angeles County, California.

4. At all times material herein, defendant ITT GILFILLAN, A division of International Telephone and Telegraph Corporation (hereinafter "ITT"), was a corporation duly organized and existing under the laws of a state of the United States, and authorized to do and doing business in the State of California, and having a principal place of business in Los Angeles County, California.

5. At all times material herein, defendant ITT and defendants International and Local 509, were parties to a written collective bargaining agreement, styled "Agreement between ITT Gilfillan, a Division of International Telephone and Telegraph Corporation and International Union United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 509, Los Angeles, California" effective from March 1, 1973 through February 29, 1976, and thereafter from year to year, hereinafter referred to as "Collective Agreement". A true copy of said Collective Agreement is attached to this complaint as Exhibit "A" hereto, and incorporated herein by reference. At all times material herein, said Collective Agreement governed the terms and conditions of employment by defendant ITT of plaintiff and of other members of International and Local No. 509.

6. From 1967 until he was wrongfully terminated on or about February 14, 1975, plaintiff was employed by defendant ITT at its facility located at 7821 Orion Avenue, Van Nuys, County of Los Angeles, California.

7. On or about February 14, 1975, defendant ITT summarily terminated plaintiff's employment, without just cause, in violation of Article II of said Collective Agreement; and at all times since that date defendant has refused to reinstate plaintiff to his former position of employment.

8. As a direct and proximate result of said breach of said Collective Agreement by defendant ITT, plaintiff has been damaged by loss of his employment by said defendant, and

has been damaged in a sum which he would have earned from such employment had defendant ITT not wrongfully terminated plaintiff; and has been damaged by reason of losing seniority, fringe benefits, and other benefits to which he was entitled under said Collective Agreement. The exact amount of damages suffered by plaintiff cannot yet be ascertained, and plaintiff prays leave of court to amend this complaint to set forth said sum when the same shall have been ascertained.

9. As a direct and proximate result of said breach of said Collective Agreement by defendant ITT, as herein alleged, plaintiff has suffered great physical hardship and has sustained severe and continuous emotional distress, to his general damage in the sum of $25,000.00.

10. The wrongful termination of plaintiff's employment by defendant ITT, as herein alleged, was malicious and was designed to injure plaintiff, and to intimidate and coerce other employees of defendant so as to cause them to forego rights guaranteed them by said Collective Agreement. By reason of defendant ITT's malicious conduct, and because this action is brought to preserve and extend the rights of all employees of defendants, plaintiff is entitled to an award of reasonable attorney's fees and litigation costs and to exemplary or punitive damages in the sum of $10,000.00.

11. Plaintiff has exhausted all internal remedies provided for in said Collective Agreement, prior to bringing this action; and any further exhaustion of such internal remedies with respect to the termination of his employment has been waived by defendants, or would be futile.

12. Plaintiff has no plain, speedy or adequate remedy at law for the wrongs alleged herein.

AS AND FOR A SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST INTER-

NATIONAL AND LOCAL 509, AND EACH OF THEM, PLAINTIFF ALLEGES:

13. Plaintiff incorporates herein by reference as if fully set forth in haec verba each and every allegation of paragraphs 1, 2, 3, 4, 5, 6 and 7 of the First Cause of Action herein.

14. At all times material herein, defendants International and Local No. 509 owed a duty of fair representation to all members of said defendant Unions, including plaintiff, i.e., the duty to represent plaintiff and all other members of said defendant Unions in the administration of said Collective Agreement without arbitrary discrimination — as the statutory exclusive Collective Bargaining Representative of such members.

15. At all times material herein, since February 14, 1975, said defendant Unions have breached their duty of fair representation to plaintiff by discriminatorily failing and refusing to protest and grieve plaintiff's wrongful termination by defendant ITT. Said defendant Unions failed and refused, upon plaintiff's request, to prosecute any protest or grievance against said defendant employer concerning said wrongful termination of plaintiff's employment; had such a protest or grievance been prosecuted by said defendant Unions in plaintiff's behalf, plaintiff would have obtained reinstatement and been otherwise made whole for his damages and losses; said defendant Unions acted arbitrarily, invidiously and discriminatorily in regard to plaintiff.

16. Plaintiff is excused from any requirement that he exhaust intra-union remedies as a condition precedent to the bringing of this lawsuit for the reason that the Union Constitution (a true copy of which is attached hereto marked Exhibit "B" and by this reference made part hereof) does not expressly provide a procedure available to plaintiff reasonably calculated to redress the particular grievance he complains of. (See Articles 32 and 33, Exhibit "B", page 58 line 60 to page 60 line 24.) No such intra-union remedy

was clearly called to plaintiff's attention by any union official.

17. Any attempt by plaintiff to exhaust intra-union remedies would have been futile by reason of the following facts: Plaintiff was terminated on February 14, 1975, and immediately filed written grievances in accordance with the provisions of Article VIII of the Collective Bargaining Contract (Exhibit "A", pages 9 to 10). The grievance was processed by the Shop Committee through Step 3 of the Grievance Procedure (Exhibit "A", pages 10-11). The Shop Committee then requested the Union to take the grievance to arbitration. (Article IX, Collective Agreement, Exhibit "A", pp. 13-14.) The Union must give the Company written notice of desire to submit a grievance to arbitration within fifteen (15) working days after the Company's decision at Step 3. (Article IX, Section 2, Exhibit "A", p. 13.) Plaintiff repeatedly, but without success, attempt to find out what was being done by the Union about the arbitration. Plaintiff's first information that the Union had determined not to take the matter to arbitration came when plaintiff received a copy of the letter of July 11, 1975, sent by Ralph Gazzigli, International Representative of defendant International to the National Labor Relations Board, a true copy of that letter as received by plaintiff is attached hereto as Exhibit "C" and by this reference made part hereof. This was approximately five months after the date of plaintiff's termination, and more than fifteen working days after the date of the Company's decision at Step 3 of the Grievance Procedure. Even if plaintiff had succeeded, through intra-union appeals procedures, in reversing Mr. Gazzigli's determination not to take his grievance to arbitration, the request for arbitration would have been rejected by the Company as untimely, and plaintiff could not obtain reinstatement and back pay.

18. As a direct and proximate result of the breach by defendants International and Local No. 509, of their duty

of fair representation to plaintiff, as herein alleged, plaintiff has been damaged by loss of his employment by said defendant ITT, and has been damaged in a sum which he would have earned from such employment had said defendant ITT not wrongfully terminated plaintiff, and has been damaged by reason of losing seniority, fringe benefits and other benefits to which he was entitled under said Collective Agreement. The exact amount of damages suffered by plaintiff cannot now be ascertained, and plaintiff prays leave of court to amend this complaint to set forth said sums when the same shall have been ascertained.

19. As a direct and proximate result of the breach by defendants International and Local No. 509, of their duty of fair representation to plaintiff, as herein alleged, plaintiff has suffered grave physical hardship and has sustained severe and continuous emotional distress, to his general damage in the sum of $25,000.00.

20. The breach by defendants International and Local No. 509 of their duty of fair representation to plaintiff as herein alleged, was malicious and was designed to injure plaintiff and to create hardship for him, and to intimidate and coerce other members of said defendant Unions so as to cause them to forego rights guaranteed them by said Collective Agreement. By reason of the malicious conduct of defendants International and Local No. 509, and each of them, and because this action is brought to preserve and extend the rights of all members of said defendant Unions, plaintiff is entitled to an award of exemplary damages.

WHEREFORE, plaintiff prays judgment against defendant as follows:

1. Injunctive relief compelling defendant ITT to reinstate plaintiff to his former (or substantially equivalent) position of employment, with all seniority and benefits to

which plaintiff would have been entitled had he not been wrongfully terminated;

2. Special damages for plaintiff in such sums as may be pleaded and proven;

3. General damages in the sum of $25,000.00;

4. Exemplary or punitive damages in the sum of $10,000.00;

5. Costs of suit herein; and

6. For such other and further relief as the court deems just.

MARGOLIS, McTERNAN, SCOPE & SACKS

By /s/ Elizabeth B. Spector
ELIZABETH B. SPECTOR
Attorneys for Plaintiff

(Exhibits A, B and C have been omitted. They appear printed elsewhere in this appendix.)

(Certificate of Proof of Service omitted in printing.)

Answer of ITT Gilfillan to First Amended Complaint for Injunction (Reinstatement) and Damages for Breach of Collective Agreement and for Breach of Duty of Fair Representation

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, v. ITT Gilfillan, a Division of International Telephone and Telegraph Corporation, a corporation, et al., Defendants. CIVIL NO. 76-0730-IH.

FILED: May 11, 1976

DEFENDANT ITT GILFILLAN, a Division of International Telephone and Telegraph Corporation (hereinafter referred to as "ITT GILFILLAN"), and for no other defendant, answers the First Amended Complaint of Plaintiff, CLIFFORD E. CLAYTON, as follows:

1. At all times mentioned herein defendant ITT GILFILLAN was a division of International Telephone and Telegraph Corporation, a corporation duly organized and existing under the laws of the State of Delaware, with a place of business located in Van Nuys, California.

2. Answering Paragraph 2, defendant ITT GILFILLAN is without knowledge or information sufficient to form a belief as to the truth of said Paragraph.

3. Answering Paragraph 6, defendant ITT GILFILLAN denies that plaintiff was wrongfully terminated.

4. Answering Paragraph 7, defendant ITT GILFILLAN admits that on or about February 14, 1975, it terminated plaintiff's employment. Defendant ITT GILFILLAN specifically denies that it terminated plaintiff in violation of its collective bargaining agreement with the International Union of United Automobile, Aerospace and Agricultural

Implement Workers of America ("UAW"), and Local Union No. 509 of the UAW.

5. Answering Paragraph 8, defendant ITT GILFILLAN denies that plaintiff has been damaged in any manner by the direct or proximate result of any breach of the aforesaid collective bargaining agreement.

6. Answering Paragraph 9, defendant ITT GILFILLAN denies that plaintiff has suffered great physical hardship and severe emotional distress as the result of any acts of said defendant and specifically denies that it should be assessed the sum of $25,000 or any amount at all as damages.

7. Answering Paragraph 10, defendant ITT GILFILLAN denies that any of its actions were malicious or designed to injure plaintiff or to intimidate or coerce other employees in order to cause them to forego rights guaranteed under the aforesaid collective bargaining agreement. Defendant ITT GILFILLAN specifically denies that plaintiff is entitled to attorneys' fees, litigation costs, or exemplary or punitive damages in the sum of $10,000 or in any sum at all.

8. Answering Paragraph 11, defendant ITT GILFILLAN denies each and every allegation contained and set forth in said paragraph.

9. Answering Paragraph 12, defendant ITT GILFILLAN denies that plaintiff has no plain, speedy or adequate remedy at law for any cause of action stated in the First Amended Complaint herein.

FIRST AFFIRMATIVE DEFENSE

10. The First Amended Complaint herein does not state sufficient facts to constitute a claim for relief against this answering defendant.

SECOND AFFIRMATIVE DEFENSE

11. Any cause of action which plaintiff may have constitutes an unfair labor practice under the Labor Management Relations Act (28 U.S.C. § 141 *et seq.*), and this Court is preempted from jurisdiction.

THIRD AFFIRMATIVE DEFENSE

12. The First Amended Complaint herein does not state any facts upon which a claim of relief for punitive damages may be maintained against defendant ITT GILFILLAN.

FOURTH AFFIRMATIVE DEFENSE

13. The First Amended Complaint herein does not state any facts upon which a claim of relief for attorneys' fees may be maintained against defendant ITT GILFILLAN.

FIFTH AFFIRMATIVE DEFENSE

14. The First Amended Complaint herein does not state any facts upon which a claim of relief for damages for emotional distress may be maintained against defendant ITT GILFILLAN.

SIXTH AFFIRMATIVE DEFENSE

15. Upon information and belief defendant ITT GILFILLAN alleges that plaintiff has failed to exhaust the internal remedies provided for by defendant UAW and defendant Local Union 509. As a result of these facts, plaintiff has failed to state any claim upon which relief can be granted against defendant ITT GILFILLAN.

WHEREFORE, defendant ITT GILFILLAN prays that the plaintiff take nothing by reason of his First Amended

Complaint herein and that said defendant be awarded its costs of suit incurred herein and such other and further relief as this Court deems just and proper.

DATED: May 7, 1976.

PARKER, MILLIKEN, KOHLMEIER,
CLARK & O'HARA
EVERETT F. MEINERS
KENNETH J. FLORENCE

/s/ By Kenneth J. Florence
Kenneth J. Florence
Attorneys for Defendant
ITT GILFILLAN

(Certificate of Proof of Service omitted in printing.)

Stipulation for Amendment to First Amended Complaint and Order

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT Gilfillan, a Division of International Telephone and Telegraph Corporation, a corporation; International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, an unincorporated labor organization; United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 509, an unincorporated labor organization. Defendants. Civil No. 76-0730 - IH.

FILED: May 13, 1976.

IT IS HEREBY STIPULATED AND AGREED by and among the parties hereto, through their respective undersigned counsel, that plaintiff's First Amended Complaint may be amended to correct a typographical error in the caption thereof. The caption will be amended to read:

> "CLIFFORD E. CLAYTON, Plaintiff, vs. ITT GILFILLAN, a Division of International Telephone and Telegraph Corporation, a corporation; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, an unincorporated labor organization; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT

WORKERS OF AMERICA, LOCAL UNION No. 509, an unincorporated labor organization. Defendants."

Dated at Los Angeles, California This 11th day of May, 1976

MARGOLIS, McTERNAN, SCOPE & SACKS
/s/ By Elizabeth B. Spector
Elizabeth B. Spector
Attorneys for Plaintiff

May 11, 1976

PARKER, MILLIKEN, KOHLMEIER, CLARK & O'HARA
/s/ By Kenneth J. Florence
Kenneth J. Florence
Attorneys for Defendant ITT Gilfillan

This 10th day of May, 1976

LEVY, KOSZDIN & WOODS,
A Professional Corporation
/s/ By Matthew B. F. Biren
Matthew B. F. Biren
Attorneys for Defendants UAW International Union and UAW Local 509

This .... day of May, 1976.

ORDER

Pursuant to the above Stipulation, and good cause therefor appearing, IT IS HEREBY ORDERED that plaintiff's First Amended Complaint may be amended in the respects recited in said Stipulation.

Dated: May 13, 1976.

/s/ Irving Hill
Judge of the United States
District Court

Answer to First Amended Complaint

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT Gilfillan, a Division of International Telephone and Telegraph Corporation, a Corporation, et al., Defendants. Civil No. 76-0730-IH.

FILED: June 17, 1976

Defendants, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 509 (hereinafter collectively referred to "Union"), severing themselves from all other defendants, answer the First Amended Complaint as follows:

1. The Union admits paragraphs 1 through 5.

2. The Union admits that Plaintiff was employed by Defendant ITT from 1967 until terminated February 14, 1975; the Union specifically denies, however, that the Plaintiff was wrongfully terminated.

3. The Union admits that the Plaintiff has not been reinstated subsequent to his termination from ITT; except as specifically admitted, the Union denies generally and specifically, each and every allegation set forth in paragraph 7.

4. With respect to the allegation set forth in paragraph 8, the Union denies that Defendant ITT breached the terms of the collective bargaining agreement. Accordingly, the Union denies, generally and specifically, each and every allegation set forth in paragraph 8 of the Complaint and specifically denies that Plaintiff has been damaged in any amounts as a result of actions taken by Defendant ITT pertaining to the termination of Plaintiff.

5. The Union denies, generally and specifically, each and every allegation set forth in paragraph 9 of the Complaint and specifically denies that Plaintiff has been damaged to any extent as a result of the actions taken by Defendant ITT in terminating the employment of Plaintiff.

6. With respect to the allegations set forth in paragraph 10 of the Complaint, the Union denies, generally and specifically, each and every allegation set forth therein and specifically denies that Plaintiff is entitled to exemplary or punitive damages in any sum, whatsoever.

7. The Union denies, generally and specifically, each and every allegation set forth in paragraphs 11 and 12 of the First Amended Complaint.

8. With respect to the allegation set forth in paragraph 13 of the Complaint, the Union incorporates by reference, as though set forth in their entirety, the responses set forth with respect to the corresponding paragraphs of the First Cause of Action incorporated through paragraph 13 into the Second Cause of Action.

9. The Union admits the allegation set forth in paragraph 14 of the First Amended Complaint.

10. The Union denies, generally and specifically, each and every allegation set forth in paragraphs 15 through 18 of the First Amended Complaint.

11. The Union denies, generally and specifically, each and every allegation contained in paragraph 19 of the Complaint and specifically denies that Plaintiff is entitled to recovery of any sum, whatsoever as a result of the conduct of the Union.

12. The Union denies, generally and specifically, each and every allegation set forth in paragraph 20 of the Complaint and specifically denies that Plaintiff is

entitled to an award of exemplary damages in any sum, whatsoever.

FIRST AFFIRMATIVE DEFENSE

13. The First Cause of Action to the First Amended Complaint does not state a claim against the Union upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

14. The Second Cause of Action to the First Amended Complaint does not state a claim against the Union upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

15. The Plaintiff has failed to exhaust his intra-union administrative grievance procedures and is therefore barred from pursuing this action.

FOURTH AFFIRMATIVE DEFENSE

16. Complaint, in its entirety, is barred by the applicable statute of limitations.

FIFTH AFFIRMATIVE DEFENSE

17. The First Amended Complaint, in its entirety, does not state any facts upon which a claim of relief for punitive damages may be maintained against the Union.

SIXTH AFFIRMATIVE DEFENSE

18. The First Amended Complaint, in its entirety, does not state any facts upon which a claim of relief of attorney's fees may be maintained against the Union.

SEVENTH AFFIRMATIVE DEFENSE

19. The First Amended Complaint, in its entirety, does not state any facts upon which a claim of relief for damages for emotional distress may be maintained against the Union.

Wherefore, the Union prays that the Plaintiff take nothing by reason of his First Amended Complaint herein and that

said Defendants be awarded its costs of suit incurred herein and such other further relief as the Court deems just and appropriate.

DATED: June 16, 1976.

LEVY, KOSZDIN & WOODS
A Professional Corporation
/s/ By Matthew B. F. Biren
MATTHEW B. F. BIREN
Attorneys for Defendants UAW International and Local 509

(Certificate of Proof of Service omitted in printing.)

Pre Trial Conference Order

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT Gilfillan, etc., et al., Defendants. No. Civil 76-0730-IH.

Filed: Dec. 6, 1976.

Following Pre Trial proceedings, pursuant to the special requirements of the Court, IT IS ORDERED:

I. *This is an action for*:

Injunction and damages for breach of collective agreement and for breach of duty of fair representation. The parties are:

Clifford E. Clayton, Plaintiff.

ITT Gilfillan, a Division of International Telephone and Telegraph Corporation, a corporation, Defendant.

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, an unincorporated labor organization, Defendant.

United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 509, an unincorporated labor organization, Defendant.

The pleadings which raise the issues are:

First Amended Complaint and Amendment to First Amended Complaint:

Answer of ITT Gilfillan, to First Amended Complaint;

Answer to First Amended Complaint by defendants UAW International and UAW, Local 509.

II. *Federal jurisdiction and venue are invoked upon the ground*:

The action is a civil action of which this Court has original jurisdiction under 28 USC §1337 and 29 U.S.C. §185(a). Defendant ITT Gilfillan is a corporation, doing business within the Central District of California. Defendant UAW International has a principal place of business within the Central District of California. Defendant UAW Local 59 is located within said Central District. Venue is properly laid in the Central District. Federal jurisdiction is admitted by all parties.

III. *The trial is estimated to take a total of 11 days, as follows*:

Defendants estimate that the trial on the issue of exhaustion will take two days; the trial on the issue of fair representation will take four days; the trial on the issue of discharge will take five days.

IV. The parties agree that the issue of exhaustion of internal remedies may be separated from the remaining issues and tried before the court without a jury. Should this issue be determined favorably to plaintiff, defendants reserve the right to move the Court for a further separation of the representation issue from the issue of the merits of the discharge. If the trial is so further bifurcated, the issue of the Unions breach of duty of fair representation will be tried before the Court without a jury. Defendants further reserve the right to argue that jury trial is not appropriate with respect to the issues of termination and just cause therefor.

Should any portion of this action be tried before a jury, at least one week prior to the date such jury trial is to begin, each counsel will deliver to the Court and opposing counsel:

(1) Proposed jury instructions, and

(2) Any special questions requested to be put to prospective jurors on voir dire.

V. *The following facts are admitted and require no proof*:

(a) At all times material herein plaintiff Clifford Clayton was a member of defendant Unions-

(b) Clifford Clayton was an employee of ITT Gilfillan.

(c) At all times herein material, there was a Collective Bargaining Agreement in existence between defendant ITT Gilfillan and defendant Unions; plaintiff Clayton's employment was governed by the terms and conditions of said Collective Bargaining Agreement.

(d) At all times material defendant ITT Gilfillan had in effect employee Rules and Regulations specifying that violations for which the employee may be suspended with a recommendation for discharge pending results of an investigation include . . .

4. Immoral or indecent conduct.

(e) At all times relevant herein, plaintiff Clayton was a Union Steward.

(f) Plaintiff Clayton was suspended from his employment pending an investigation, on February 7, 1975 and was terminated by defendant ITT Gilfillan on February 14, 1975.

(g) Clayton timely filed grievances in accordance with the Grievance and Arbitration procedure of the Collective Bargaining Contract between defendant Unions and ITT Gilfillan, protesting his suspension and termination.

(h) Said grievances were processed by defendant Union through the first Three Steps of the contractual grievance procedure and remained unresolved.

(i) A timely request for arbitration was filed by defendant Unions.

(j) The defendant Unions withdrew the request to arbitrate on July 11, 1975.

(k) Plaintiff Clayton did not initiate the appeals procedures provided for in Articles XXXII and XXXIII of the UAW Constitution.

(l) Plaintiff Clayton did not seek medical attention for alleged emotional distress.

VI. *The following facts though not admitted are not to be contested at the trial by evidence to the contrary.*

NONE

VII. *The following mixed issues of fact and law, and no others, remain to be litigated at the trial.*

(a) In refusing to arbitrate plaintiff's grievance, did the defendant Unions:

(1) Act arbitrarily?

(2) Act discriminatorily?

(3) Act capriciously?

(b) Was the Union negligent in its handling of plaintiff's grievance.

(c) In its refusal to arbitrate plaintiff's grievance was the Union's conduct:

(1) Outrageous.

(2) Malicious.

(d) Was it futile for plaintiff to attempt to exhaust Union internal remedies.

(e) Did the Union internal appeals procedure provide adequate remedies for plaintiff.

(f) Is plaintiff barred from pursuing this litigation because of his failure to exhaust internal Union remedies.

(g) Was there just cause to support defendant ITT Gilfillan's discharge of plaintiff.

(h) Did plaintiff suffer emotional distress.

(i) Is plaintiff entitled to damages for emotional distress against:

(1) Defendant ITT Gilfillan.

(2) Defendant Union.

(j) Amount of damages suffered by plaintiff.

(k) Did plaintiff take adequate actions to mitigate damages.

(l) Measure of damages.

VIII. *The following issues of law and no others remain to be litigated at the trial:*

(a) Is plaintiff entitled to punitve damages:

(1) Against defendant ITT Gilfillan.

(2) Against defendant Unions.

(b) Is plaintiff entitled to recover attorneys' fees:

(1) Against defendant ITT Gilfillan.

(2) Against defendant Unions.

IX. *The exhibits to be offered at the trial are as follows:*

FOR PLAINTIFF:

1. Collective Bargaining Agreement between defendant ITT Gilfillan and defendant Unions in effect in February, 1975.

2. Constitution and By-Laws of defendant International.

3. Letter of Ralph Gazzigli to National Labor Relations Board, dated July 11, 1975.

4. Notes of investigation made by Lois Casey of events leading up to plaintiff's discharge.

5. Performance evaluations of plaintiff's work by defendant ITT Gilfillan.

6. Milligan's notes of investigation carried on by defendant ITT Gilfillan.

JOINT EXHIBITS FOR DEFENDANT ITT GILFILLAN AND DEFENDANT UNIONS.

A. Collective Bargaining Agreement between defendant ITT Gilfillan and defendant Unions in effect in February, 1975.

B. Constitution and By-Laws of defendant International.

C. Letter of Ralph Gazzigli to National Labor Relations Board, dated July 11, 1975.

D. Notes of investigation made by Lois Casey of events leading up to plaintiff's discharge.

E. Copies of Solidarity, attached to defendant's Union's Motion for Summary Judgment.

F. Copies of Public Review Board Opinions, attached to defendant's Union's Motion for Summary Judgment.

G. Summary of prior disciplinary action taken against plaintiff by defendant ITT.

H. Copies of the two grievances filed by plaintiff.

I. Defendant ITT Gilfillan's responses to those grievances.

All of the above exhibits may be admitted into evidence without objection, except the following which are objected to:

EXHIBIT NO.	NATURE OF OBJECTION
5	Lack of relevance.
6	Lack of relevance.
E	Lack of foundation; irrelevant.
F	Lack of foundation; irrelevant.
G	Irrelevant.

X. Discovery is not yet complete. The parties agree that discovery will be completed 30 days in advance of trial, unless special permission is obtained from the Court to conduct discovery during the 30 day period in advance of trial.

XI. *The following witnesses will be called to testify for plaintiff.*

Clifford Clayton, 1852 West 76th St., Los Angeles, CA. 90008

Lois Casey, 10945 Rosco Boulevard, Sun Valley, CA 91352.

Bertha Figueroa, 763 Chatsworth Drive, San Fernando, CA.

Hosie Payne, 4422 Pinafore Street, Apt. 1, Los Angeles, CA 90008

Plaintiff has not yet determined whether or not he will call any expert witnesses. It is agreed between the parties that plaintiff may add such experts to his list of witnesses provided that he furnishes the names of such experts and their field of expertise within 30 days prior to trial on the issue for which the experts will be called and will not object to defendants' deposing those witnesses within that 30 day period. Defendants will not object to plaintiff's deposing their expert witnesses within that same 30 days period.

Joint Witnesses For Defendant ITT Gilfillan and Defendant Unions.

On the issue of exhaustion of Union remedies, defendants will call the following witnesses:

Clifford Clayton, address above.

Ralph Gazzigli, 7802 Apperson Street, Sunland, CA.

Bob Lassiter, United Automobile Workers, Local 509.

David Klein, c/o Solidarity House, 5200 Jefferson Avenue, Detroit, Michigan.

Benjamin Aaron, School of Law, University of California at Los Angeles.

M. Jay Whitman, c/o Solidarity House, 5200 Jefferson Avenue, Detroit, Michigan.

On the issue of breach of duty of fair representation defendants will call the following witnesses:

Clifford Clayton, address above.

Bob Lassiter, address above.

Lois Casey, address above.

Jerry Whipple, 5150 E. Gage Street Bell, California.

Charles K. Hackler (expert witness).

Joseph Gentile (expert witness) 1801 Century Park East, Los Angeles, California 90067.

Adolph Koven, 304 Greenwich Street, San Francisco, California 94133 (expert witness).

Jack Milligan, ITT-Gilfillan.

On the issue of plaintiff's termination and just cause therefor, defendants will call the following witnesses:

Clifford Clayton, address above.

Ralph Gazzigli, address above.

Lois Casey, address above.

Hosie Payne, address above.

Don Carpenter, 7345 LaSaine Avenue, Van Nuys, CA., 91406.

Clason T. Jones, 36200 North Paradise Ranch Road, Castaic, Los Angeles, California

Jack Milligan, address above.

George Dumont, ITT Gilfillan.

XII. *The following Law and Motion matters are pending or contemplated.*

Plaintiff intends to move the Court for permission to amend his complaint to claim attorneys' fees against defendant Unions based upon Appellate decisions rendered after the decision in *Alyeska Pipeline Service Company v. Wilderness Society*, 420 U.S. 240, 44 L.Ed. 2d 141 (1975).

Defendants reserve the right to move the Court to separate further the issue of fair representation from the issue of the merits of plaintiff's discharge.

XIII. The foregoing admissions having been made by the parties, and the parties having specified the foregoing issues of fact and law remaining to be litigated, this order shall supplement the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

Dated: Dec. 6 1976

/s/ Irving Hill
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT.

MARGOLIS, McTERNAN, SCOPE & SACKS,
/s/ By Elizabeth B. Spector
Elizabeth B. Spector
Attorney for Plaintiff

LEVY, KOSZDIN & WOODS,
/s/ By Matthew B. F. Biren
Matthew B. F. Biren
Attorneys for defendant UAW, International Union and UAW Local 509

PARKER MILLIKEN, KOHLMEYER, CLARK & O'HARA,
/s/ By Everett F. Meiners
Everett F. Meiners
Attorneys for defendant ITT Gilfillan

Excerpts from Joint Trial Exhibit A
— Collective Bargaining Agreement —

AGREEMENT
between
ITT GILFILLAN
a Division of
INTERNATIONAL TELEPHONE AND
TELEGRAPH CORPORATION
and
INTERNATIONAL UNION
UNITED AUTOMOBILE,
AEROSPACE
AND AGRICULTURAL
IMPLEMENT WORKERS
OF AMERICA
LOCAL UNION NO. 509
LOS ANGELES, CALIFORNIA
1973-1976

INDEX

		Page
	Preamble	iii
	Purpose	iii
Article I	Union Recognition	1
Article II	Management Rights	2
Article III	Union Security	2
Article IV	Check Off	3
Article V	No Strikes and Lockouts	4
Article VI	Union Representation	5
Article VII	Government Responsibility	8
Article VIII	Grievance Procedure	9
Article IX	Arbitration	13
Article X	Seniority	14
Article XI	Probationary Employees	22
Article XII	Contract Employees	23
Article XIII	Physical Examinations	23

Article XIV	Bulletin Boards	25
Article XV	Anti-Discrimination	26
Article XVI	Leaves of Absence	26
Article XVII	Industrial Illness or Injury	28
Article XVIII	Work by Non-Bargaining Unit Employees	29
Article XIX	Smoking on the Job	30
Article XX	Safety	30
Article XXI	Pay Day	31
Article XXII	Vacations	31
Article XXIII	Sick Pay	34
Article XXIV	Hours of Work and Overtime	35
Article XXV	Holidays	38
Article XXVI	Bereavement Pay	40
Article XXVII	Jury Duty	41
Article XXVIII	Wash-Up Time	42
Article XXIX	Military Pay Differential	43
Article XXX	Educational Assistance	44
Article XXXI	Group Insurance and Hospitalization	44
Article XXXII	Pension	45
Article XXXIII	Wages	45
Article XXXIV	Apprenticeship Program	50
Article XXXV	Legality of Provisions	50
Article XXXVI	No Implied Waiver	50
Article XXXVII	General Provisions	51
Article XXXVIII	Complete Agreement	51
Article XXXIX	Contract Duration	52
Appendix A Section 1	Job Families	A-1
Appendix A Section 2	Standard Hourly Wage Structure	A-6
Appendix B	Medical Directory	A-9
Appendix C	Pension Plan Highlights	A-11

* * *

ARTICLE II
MANAGEMENT RIGHTS

The management of the Company and the direction of the working force are vested exclusively in the Company and shall not in any way be abridged except as specific restrictions are set forth in this Agreement.

The Company hereby retains the sole control over all matters concerning the operations, management and administration of its business; the determination of the location and relocation of its plants; the determination of the products to be manufactured or the services to be rendered; the determination as to whether components, piece parts or complete manufactured units or services shall be made or purchased; the direction, instruction and control of employees including, but not limited to, the determination of the qualifications of employees to perform work, the determination of quality standards, the assignment of work or overtime, the right to select, hire, lay off, reclassify, promote, transfer, or retire, to discipline, suspend or discharge for just cause, the right to determine job content and to create new job classifications; the right to combine and, or eliminate job classifications and to establish new rates of pay therefore; the right to determine the hours of work, the starting and quitting times, the processes, methods and procedures to be employed; and the right to make and enforce rules, and to perform all other functions inherent in the administration, management, control and or direction of business except as expressly limited by the terms of the Agreement.

* * *

ARTICLE VIII
GRIEVANCE PROCEDURE

Section 1.

The Company and the Union recognize the necessity for speedy and equitable adjustment of all grievances or disputes. Both parties pledge their best efforts and cooperation in a joint effort to make the grievance procedure function satisfactorily for all concerned.

It is the intention of both Company and Union to eliminate all unnecessary grievances and promptly and equitably adjust all those grievances which are meritorious. It is the intention of both Company and Union that the first step of the grievance procedure shall be handled insofar as possible and practicable between the aggrieved employee with or through his Shop Steward and the Foreman of the aggrieved employee.

Section 2.

(a) Any controversy or difference as to (1) interpretation or application of this agreement, or (2) any alleged violation of this agreement, shall be subject to the grievance procedure as set forth in this Article.

If a satisfactory adjustment of the dispute is not made between the Foreman and the employee or his Shop Steward, the following procedure shall be followed:

Step 1: The written grievance shall be signed by the employee and, or Shop Steward and presented to the employee's supervisor within five (5) working days from the inception or discovery of the incident which gave rise to the grievance. The supervisor shall give his answer and reasons for his decisions in writing for specific violations to the grievant through the Shop Steward within three (3) working days following receipt of the written grievance. The supervisor's answer shall not constitute the Company's defense in the subsequent steps of the grievance procedure.

Step 2: If the answer in Step 1 is not satisfactory, the Shop Committeeman will meet and present the grievance to the Director of Employee Relations or his designated representative within five (5) working days of receipt of the answer in Step 1. The Director of

Employee Relations or designated representative will render his decision in writing within five (5) working days of receipt of the grievance in Step 2.

Step 3: If the answer in Step 2 is not satisfactory, the Union may within three (3) working days after the answer at Step 2, request that the grievance be discussed at the next regular grievance committee meeting. The Director of Employee Relations, and, or such other representative of the Company as he shall designate, will meet on Wednesday at 2:00 o'clock with the grievance committee unless by mutual agreement another day is selected. Witnesses will not be called to a third step meeting without mutual agreement.

(b) Unresolved grievances and any other dispute shall be referred to the Director of Employee Relations or his delegate and the International Representative or a local union representative (or their delegates). Any such unresolved dispute or grievances shall be submitted on an agenda basis to be discussed following the conclusion of third step grievance meetings. By mutual agreement grievances may be referred back to a previous step in the grievance procedure.

Section 3.

It is agreed that a local 509 representative or the Shop Committeeman shall have the right to file a grievance at Step 3, provided that any such grievance is filed within six (6) working days of the happening of the event which gave rise to the grievance, and all reasonable attempts have been made to process the grievance in the first and second step.

Section 4.

Any employee who desires to consult with a Shop Steward or Shop Committeeman with respect to a grievance shall

advise his supervisor prior to any such meeting. Any Shop Steward or Shop Committeeman who finds it necessary to investigate a grievance shall notify his supervisor. Subject to reasonable delay for production reasons, the supervisor shall make the necessary arrangements for any such meeting or investigation.

Section 5.

The time limits contained herein may be extended by mutual agreement in writing by the parties concerned.

Section 6.

In the event an employee is to be suspended or discharged from employment, the following procedure will apply:

The employee will be notified of the action to be taken in the presence of his Shop Committeeman and/or Shop Steward, in the absence of the Shop Committeeman. In the event the regular Shop Steward or Shop Committeeman is not present at the plant, the management shall advise the employee of his right under the Agreement and shall advise the Chairman of the Committee. The regular Shop Steward and/or Shop Committeeman shall be advised of the action as soon as possible. An employee who is discharged or his Shop Steward or Shop Committeeman may process his grievance to Step 2 of the Grievance Procedure, provided he does so within three (3) working days of his last hour worked, or in the case of an absent employee, within three (3) working days of notification of discharge. The Company will notify the Union at the time a Bargaining Unit employee is discharged.

Section 7.

The Company recognizes its responsibility to process grievances in a timely manner, however, any grievance not answered by the Company in the proper time limit shall be

automatically moved to the next step, as though the answer had been negative.

Section 8.

In the case of a grievance involving the loss of time or money, the Company shall not be required, under any circumstances, to make payments for any period of time in excess of thirty (30) working days prior to the date the grievance was originally submitted in writing in the Grievance Procedure.

Any back pay awarded shall be mitigated by other competition received by an employee from any source while he was in a suspended, discharged, laid off, or other inactive Company status. The intent of this clause is to make the employee "whole". This clause shall also apply in arbitration cases.

ARTICLE IX
ARBITRATION

Section 1.

Only grievances or disputes as to (1) interpretation or application of an express provision of this Agreement, or (2) any violation of an express provision of this Agreement which have not been settled satisfactorily at Step 3, may be arbitrated as provided in this Article.

Section 2.

If the Union desires to submit a grievance or dispute, as defined in Section 1 of this Article, to arbitration, notice shall be given to the Company in writing within fifteen (15) working days after the date of the Company's decision at Step 3 of the Grievance Procedure. The parties shall within five (5) working days thereafter agree on the selection of an arbitrator. In the event the parties cannot agree on the

selection of an arbitrator within this five (5) day period, the arbitrator shall be chosen as follows:

The Union will request, in writing with a copy to the Company, the Federal Mediation and Conciliation Service, to submit a list of five arbitrators. Each party shall alternately strike one (1) name from the list, and the remaining individual shall be the arbitrator. The party striking the first name shall be decided by lot. In the event that the selected arbitrator is not able to conduct the hearing, the parties will mutually agree upon a substitute or use the procedure of this Section as necessary.

Section 3.

The authority of the arbitrator shall be limited to the interpretation or application of the existing written terms of this Agreement, and all other matters are expressly excluded from arbitration. The arbitrator shall have no power to add to, subtract from, or modify the terms of this Agreement or any Agreement supplementary hereto.

Section 4.

The written decision of the Arbitrator shall be final and binding upon the parties hereto. Such decision shall be rendered in writing and shall be issued to the parties within thirty (30) days of the completion of the hearing. Two (2) copies of the finding and award will be mailed to the Company and one (1) each to the Union Local, Regional and International headquarters.

Section 5.

The expenses and compensation of the arbitrator shall be equally borne by the Company and the Union.

ARTICLE X
SENIORITY

Section 1. Seniority Defined

Seniority is defined as the length of an employee's continuous service with the Company. The continuous service

date shall mean the original date of hire, except that if an adjustment has been made, the "hire date" shall be his adjusted hire date. On the effective date of this Agreement, all seniority dates in effect immediately prior thereto shall continue in effect.

Section 2. Application of Seniority

For purposes of applying the seniority provisions pertaining to promotions and transfers, assignment to shifts, layoff and recall and temporary layoff, the Van Nuys Complex shall constitute the Seniority Unit.

Section 3. Job Families

Similar work is defined as job classifications that have been grouped into job families in a manner designed to insure that skills and abilities required within a given job family are similar to the extent that (a) a minimum amount of training time would be necessary to teach the employee the jobs immediately above or below his present classification, and (b) it is most likely that the employee would be capable of efficiently performing the jobs immediately above or below his present classification with the training mentioned above. Such job families are set forth in Section 1 to Appendix A.

Section 4. Promotions

In all cases of promotion of employees to jobs within the bargaining unit to a job related by job family to the job which they are presently doing, the following shall control:

(1) Seniority;

(2) Ability and capacity to perform the job. Where ability and capacity are relatively equal as between two employees, the employee having the greater seniority shall be given preference in the promotion.

Leadmen shall be promoted on the basis of qualifications with respect to performance, leadership and ability to instruct other employees. In any case where these qualifications are relatively equal, seniority shall be the deciding factor.

Section 5. Temporary Layoff

In the event a temporary reduction in the number of employees in a job classification is required, it is the intent of the Company to recognize seniority if possible. For purposes of this Article, a temporary reduction will not exceed three (3) working days and no senior employee shall be temporarily laid off more than six (6) days per year.

Section 6. Notice of Layoff

If possible, the Company shall give an employee scheduled to be laid off and his Steward at least two (2) working days notice in advance of such layoff.

Section 7. Preferential Seniority for Union Representatives

For purposes of reduction of work force or transfer, recognized Committeemen and Stewards shall be considered as having the longest term of service in their area of representation.

Section 8. Shift Transfers

If there is no prior written request from a senior employee in the classification to be transferred to another shift, the least senior employee in the classification will be moved to the other shift, in accordance with provisions of Article XXXVII, Section 1, provided he has demonstrated the skill and ability to perform the work of the employee whom he will replace. This section shall only apply to available openings withing the employee's job classification.

Section 9. Job Posting

When a vacancy occurs in any job classification which cannot be filled under the provisions of Section 4 of this Article, a notice will be posted on the Company Bulletin Boards and employees will be given two (2) working days in which to file a written application listing their qualifications for the job. Qualifications shall include past experience on work similar to the new job or vacancy, educational training, and experience as an employee at ITT Gilfillan, as well as seniority. At the close of the application period, the vacancy shall be filled from among qualified applicants. Seniority will be the determining factor, provided the senior employee is qualified to perform the vacant job in a satisfactory manner. Employees refused job bid will be notified of reasons for refusal in writing.

In the event there are no qualified applicants for the job, the Company may offer the vacancy to qualified non-applicants or fill the vacancy by hiring.

If it is demonstrated at any time within thirty (30) calendar days that the employee is not qualified in the classification into which he was placed as a result of bidding, he shall be returned to his former job classification and rate and shall have no bid rights for any other classification for three (3) months or that classification for a six (6) month period. These time limits may be waived by mutual agreement.

If an employee terminates or fails to qualify during his trial period on the job, the Company will fill the opening from among the original qualified applicants in the same manner stated above and will not post the job again.

Upgraded employees who qualify for the job at the end of thirty (30) days shall receive their former rate of pay or the rate provided for in Step 1 of the new classification, whichever is higher, and shall have no bid rights for six (6) months which may be waived by mutual agreement.

Section 10. Terminating Seniority

Seniority shall be broken and terminated for the following reasons:

(a) Resignations:

(b) Discharge for cause;

(c) Layoff or absence from the payroll for any reason other than industrial accident, military or union leave for a greater length of time than two (2) years for employees with less than five (5) years of service and three (3) years for employees with more than five (5) years of service.

(d) Failure to return to work at the end of his vacation period or at the end of an approved leave of absence unless prevented by conditions beyond his control.

(e) Failure to accept a recall to the highest classification to which he has recall rights within five (5) working days after notice of recall. If recalled to another classification in his job family, he may decline such recall and sign a waiver indicating he had an opportunity for recall. He shall then continue on layoff until another recall opportunity is available.

(f) Failure to notify the Company within three (3) consecutive days of absence unless prevented by conditions beyond control of the employee.

(g) Retirement

Within five (5) working days from the end of each calendar month the Company will provide the Union a list of employees who are terminated in accordance with paragraphs (c), (d), (e) and (f) above.

Section 11. Temporary Transfers

(a) Transfers for a period of up to thirty (30) calendar days will be known as temporary transfers.

(b) Where there is not sufficient work for an employee in his regular job classification, the Company may utilize the employee in a higher classification or a classification in the same labor grade on his shift. If so, the employee will receive the equivalent step of the same or higher labor grade. In selecting the employee to perform, the Company shall select the most senior.

(c) Where there is not sufficient work in an employee's classification, the Company may utilize the employee in a lower classification on his shift. If so, the employee shall receive his regular rate of pay. The least senior employee shall be selected for transfer to the lower classification.

(d) Under no circumstances will either of the methods outlined in (b) or (c) above be used to permanently fill an opening and thereby circumvent the normal job filling procedures.

Section 12. Layoff

When there is a reduction of the work force, the following procedures shall be followed:

(a) Within any classification in which reductions are made, probationary employees shall be laid off first.

(b) If further reductions in the work force are necessary within any classification, employees shall be removed first from such job classification in accordance with their seniority provided that the remaining employees are capable of performing the remaining work.

(c) Any seniority employee may exercise his seniority in any other classification in the same or a lower labor grade in his job family, displacing employees with less seniority, provided that the senior employee shall have the ability to perform the work.

(d) A displaced seniority employee may also exercise his seniority in any classification in another job family, provided he previously held such classification at ITT Gilfillan and that he has skill and ability relatively equal to the employee whom he seeks to replace. If he replaces and it is determined within five (5) working days that a mistake was made and the employee cannot perform, he will be laid off in accordance with the provisions of Section 12 with the exception of this paragraph.

(e) If a displaced employee refuses to exercise any of the options available to him under the provisions of Section 12 (c) and (d), he shall be deemed to have voluntarily terminated his employment with the Company and shall lose any recall rights under the Collective Bargaining Agreement except as provided in Section 12(f).

(f) If the only option or options available to the displaced employee would place him in a classification resulting in a reduction of his hourly rate of pay, the displaced employee has the option of accepting the lower-rated classification or being placed on layoff status. If the employee elects to be laid off, he waives recall rights except to his highest classification, unless the employee notifies the Company by return receipt letter or telegram that he wishes to be recalled to lower classifications. In that event he will be immediately placed on the recall list for all jobs for which he has recall rights and will be recalled in seniority order.

(g) An employee who is removed from his classification and displaces under the terms of paragraph (c) and (d) above may, seniority permitting, displace the least senior employee in the highest classification to which he has displacement rights on his present shift, rather

than change shifts. The least senior employee must then change shifts, seniority permitting, or be terminated from the Company. If the least senior employee is unable to change shifts by reason of seniority, he may exercise his seniority in accordance with paragraph (c), (d), (e) and (f) above.

Section 13. Recalls

Employees shall be recalled from layoff in seniority order in the job family, or families, from which they were displaced as a result of a reduction in force. As openings occur in the classification from which an employee was removed due to a reduction in force he will be returned to that classification in seniority order.

An employee must accept recall to the highest classification to which he is entitled to return to work.

Employees who, in accordance with this Article, are eligible to fill a job vacancy by being recalled from layoff will be notified by the Company either by telephone, or by return receipt telegram or certified letter to the employee's last address on record, it being the responsibility of the employee to keep the Company informed of his current correct address. The Company may fill the opening on a temporary basis pending the return of such employee. An employee so notified shall report for work or notify the Company of his intention to report for work within two (2) working days after receiving notice of recall. The employee shall return to work at the agreed upon date, but not later than five (5) working days after receipt of such notice. If an employee fails to comply with any of the provisions of this section, the Company may immediately recall, in lieu of such employee, the employee next eligible for recall to fill the available position and the non-complying employee shall be terminated.

Section 14. Returning to the Bargaining Unit

Employees heretofore or hereafter selected for positions outside the Bargaining Unit and who are thereafter laid off may return to the Bargaining Unit and be placed in the same job classification from which they were selected, if qualified, in accordance with the following:

(a) Employees heretofore transferred into positions outside the Bargaining Unit shall retain their seniority up to March 1, 1973 but not accumulate seniority beyond that date.

(b) Employees who hereafter transfer into non-bargaining unit jobs within the Company will accumulate seniority for an additional year and then will retain, but not accumulate, seniority thereafter.

In case they do not have sufficient seniority to displace present employees in said job classifications, they shall be considered as though they had been laid off from those classifications and will be entitled to displace employees of lesser seniority in other classifications for which they are qualified and to which they are entitled under the provisions of Sections 12 and 13 of this Article.

* * *

ARTICLE XXII
VACATIONS

Section 1. Eligibility

Eligible employees shall receive annual vacation pay as follows:

(a) Employees with one (1) or more years, but less than ten (10) years of seniority, shall be eligible for two (2) weeks of vacation with pay at the rate in effect at the time vacation is taken.

(b) Employees with ten (10) or more years, but less than twenty (20) years of seniority, shall be eligible for three (3) weeks of vacation at the rate of pay in effect at the time the vacation is taken;

(c) Employees with twenty (20) or more years of seniority shall be eligible for four (4) weeks of vacation at the rate of pay in effect at the time the vacation is taken.

Section 2. Accrual Rates

Any employee who has completed 1600 hours of work or who was off in pay status during his accrual year will receive vacation in accordance with Section 1 (a) (b) (c) of Article XXII, an employee who fails to work the full 1600 hours will receive vacation in accordance with the following accrual rates:

(a) An employee in Section 1 (a) above will accrue vacation time at the rate of 6.66 hours for each month in which the employee worked, or was off in pay status, at least 120 hours.

(b) An employee in Section 1 (b) above will accrue vacation time at the rate of ten (10) hours for each month in which the employee worked, or was off in pay status, at least 120 hours.

(c) An employee in Section 1 (c) above will accrue vacation time at the rate of 13.33 hours for each month in which the employee worked, or was off in pay status, at least 120 hours.

Section 3. Time for Taking Vacation

Vacation shall be taken within one (1) year after the employee's anniversary date, provided that one vacation shall not be taken within two (2) months of the next vacation. Vacations shall be scheduled to provide minimum interference with production requirements. So far as practical,

vacation time preference will be given to employees with the greatest seniority.

Section 4. Vacation Payment

Employees will receive their vacation pay on the last regularly-scheduled work day prior to the beginning of vacation at their regular straight-time hourly rate of pay on that day. Employees on the second and third shift on the last scheduled work day prior to their vacation will receive their normal shift premium during the vacation. Employees on leadman status the last scheduled work day prior to the vacation will receive their leadman bonus during the vacation.

(a) Payment in lieu of vacation shall not be permitted except upon the request of the employee and the written approval of the Director of Employee Relations.

(b) Employees who have passed their anniversary date and are entitled to but have neither taken or been paid for the vacation to which they would have been entitled under the provisions of Sections 1 and 2 of this Article shall be paid such vacation pay upon termination of their employment for the following reasons only:

1. layoff for lack of work
2. retirement under the provisions of the ITT Gilfillan Pension Plan for Hourly Rated Employees dated March 28, 1966, as amended herein;
3. discharge;
4. voluntary termination;
5. death of the employee, in which case payment shall be made to the employee's heirs or to his estate.

(c) Prorata vacation pay accrued since the last anniversary date shall be paid to employees for termination of their employment for the following reasons only:

1. layoff for lack of work;

2. retirement under the provisions of the ITT Gilfillan Pension Plan for Hourly Rated Employees dated March 28, 1966, as amended herein;

3. discharge (for other than disciplinary reasons);

4. voluntary termination;

5. death of the employee, in which case payment shall be made to the employee's heirs or to his estate.

* * *

ARTICLE XXIII
SICK PAY

Section 1.

Employees who have completed one (1) year or more of seniority during any calendar year, and who have completed 1600 hours of work or who were off in pay status, in which this contract is in effect shall receive a maximum of 40 hours sick pay. For purposes of this Article an employee's qualifying year shall begin on his anniversary date in the appropriate calendar year and end on his anniversary date the following year. For each month during the qualifying year in which an employee works or is on pay status for at least 120 hours, he shall be entitled to 3.333 hours of sick pay. After March 1, 1974 employees will receive a maximum of forty-eight (48) hours of sick pay.

Section 2.

Sick pay earned but not used prior to the end of the qualifying year shall be paid to the employee on his anni-

versary date. Sick pay may not be accumulated from year to year.

ARTICLE XXIV
HOURS OF WORK AND OVERTIME

Section 1. Work Day and Work Week Defined

Eight (8) consecutive hours (exclusive of lunch period) shall constitute the normal work day for employees working the first and second shifts. The normal work weeks shall be Monday through Friday. This section does not guarantee the number of hours or the days that an employee may work during the work week, nor does it constitute a limitation on the number of hours he may be required to work in such a work week.

ARTICLE XXV
HOLIDAYS

Section 1.

The Company recognizes the following annual holidays for holiday pay purposes:

1. New Year's Day
2. Memorial Day
3. Independence Day
4. Labor Day
5. Thanksgiving Day
6. Day after Thanksgiving
7. December 24th
8. Christmas
9. December 31st

10. One floating holiday to be decided by the Company at its sole discretion.

Section 2.

The above-mentioned holidays, when not worked by an employee, shall be paid as hereinafter provided, if the following requirements are met:

(a) The employee must be actively employed.

(b) The employee must have worked on the last scheduled work day prior to and on the next scheduled work day after the holiday.

An employee will be excused from compliance with requirement (b) because of personal illness or disability or death in the employee's immediate family or other circumstances recognized and approved by the Company. Proof acceptable to the Director of Employee Relations or a designated representative of the reasons for such absence may be required as substantiation of their validity.

Section 3.

When a holiday falls on a Sunday, the following Monday shall be observed as a holiday. When a holiday falls on a Saturday, the holiday shall be observed on the previous Friday.

If a holiday falls during the employee's vacation period, payment for the holiday will be added to the paycheck of the employee after he returns from his vacation.

Section 4.

The rate of pay for holidays not worked by employees will be figured on eight (8) hours at the employee's regular straight time hourly rate. Employees on the 2nd or 3rd shift on the day before the holiday will receive shift premium for the holiday. Employees on leadman status the day before the holiday will receive their leadman bonus for the holiday.

Section 5.

If an employee is required to work on a designated holiday, he shall receive, in addition to his holiday pay, compensation for all hours actually worked on such holiday at one and one-half (1½) times his regular straight time hourly rate.

Section 6.

An employee who is scheduled and agrees to work on a holiday and fails to do so forfeits his right to receive holiday pay for that day.

ARTICLE XXVI
BEREAVEMENT PAY

Section 1.

In the event of death in the immediate family of the employee, he will be allowed three (3) days off with pay computed at his basic hourly rate provided he has completed his probationary period with the Company. For purposes of this Section, immediate family is defined to include spouse, mother, father, children, brother or sister of the employee or the parents of the employee's current spouse.

Section 2.

Verification may be requested by the Company and it shall be submitted to the Employee Relations Department.

ARTICLE XXVII
JURY DUTY

Section 1.

Any senior employee who is summoned and reports for jury duty, as prescribed by applicable law, shall be paid by

the Company an amount equal to the difference between the amount of wages an employee otherwise would have earned by working during straight time hours on that day and the daily jury fee paid by the Court (not including travel allowances or reimbursement of expenses) for each day on which he otherwise would have been scheduled to work for the Company, not to exceed a maximum of thirty (30) days in any calendar year. Such compensation shall not be payable if the employee:

(a) Fails to give the Company notice three (3) working days prior to the commencement of such jury duty; or

(b) Fails to present evidence that he has reported for and/or performed jury duty, and the amount of compensation received by the employee for such jury duty; or

(c) Performs such jury duty on a holiday or while on leave, vacation, or in any other pay status with the Company.

Section 2.

A senior employee who is summoned and reports for an interview and examination to determine his qualifications for jury duty shall receive a maximum of four (4) hours time off with pay for that purpose if the interview and examination is conducted on a day on which the employee would otherwise have been scheduled to work for the Company and if the employee gives the Company notice thereof at least three (3) working days prior to the interview and examination.

Section 3.

An employee on jury duty status will report to work when not required to report to the court or is excused from jury duty early on any given day which is a regular scheduled

work day. An employee on the first shift who is excused from jury duty early must work the balance of his shift, if he is excused in time to report and complete three (3) or more hours of work. An employee on the second shift who is excused from jury duty before 1:00 p.m. must report and work the first four (4) hours of his regular scheduled shift. Failure to report for work as specified will result in forfeiture of jury duty differential pay for that day as provided herein.

Section 4.

Employees who volunteer for jury duty or employees with less than sixty (60) days of service will be authorized time off for jury duty without pay.

Section 5.

The Company reserves the right to request exemption from jury service of any employee whose absence would have a detrimental effect on the performance of the Company.

* * *

ARTICLE XXXI
GROUP INSURANCE AND HOSPITALIZATION

It is agreed that the Company will continue in effect during the term of this Agreement the present group insurance and hospitalization plan designated "ITT Gilfillan Hourly Group Insurance and Hospitalization Plan" with the following exceptions:

(a) The life insurance benefits for the employees shall be $7,000.

(b) The accidental death and dismemberment benefits for the employees shall be $7,000.

(c) The maximum number of covered days for hospital room and board shall be 181 days.

(1) Maximum total payment for the first 31 days shall be increased from $55 per day to $70.00 per day.

(2) Maximum total payment for the remaining 150 days shall be increased from $40.00 per day to $52.00 per day.

* These benefits are integrated with California UCD hospital benefits.

(d) Major medical coverage shall be increased from $10,000 to $15,000.

(e) Any employee so desiring may, while on approved medical leave of absence, maintain the group insurance coverage for his dependents by paying the Company the dependent coverage amount of $1.00 per week billed monthly in advance.

ARTICLE XXXII
PENSION

The Pension Plan designated as "The ITT Gilfillan Pension Plan for Hourly Employees" dated January 31, 1964, as amended, is incorporated by reference in this contract. The highlights of the Pension Plan, as amended, are attached as Appendix C.

* * *

STANDARD HOURLY WAGE STRUCTURE

Labor Grade	Minimum Rate	Step I	Step II	Step III	Step IV	Step V	Step VI	Step VII	Step VIII	Step IX	Maximum Rate Schedule1
1973-1974 (Effective 3-1-73)											
1	2.69	2.84	3.00	3.06	3.11	3.16	3.22	3.27	3.33	3.38	3.45
2	2.85	3.00	3.16	3.22	3.27	3.33	3.38	3.43	3.49	3.54	3.64
3	3.07	3.22	3.38	3.43	3.49	3.54	3.60	3.65	3.70	3.76	3.88
4	3.35	3.48	3.55	3.61	3.68	3.74	3.81	3.87	3.94	4.00	3.07
5	3.57	3.70	3.77	3.83	3.89	3.96	4.03	4.09	4.15	4.22	4.32
6	3.80	3.93	3.99	4.06	4.12	4.19	4.25	4.32	4.38	4.45	4.51
7	3.91	4.06	4.13	4.21	4.29	4.36	4.43	4.51	4.59	4.66	4.74
8	4.23	4.38	4.46	4.53	4.61	4.68	4.76	4.84	4.91	4.99	5.07
9	4.47	4.62	4.69	4.77	4.85	4.92	5.00	5.08	5.15	5.22	5.30
10	4.70	4.86	4.93	5.01	5.09	5.16	5.23	5.31	5.39	5.46	5.54

Labor Grade	Minimum Rate	Step I	Step II	Step III	Step IV	Step V	Step VI	Step VII	Step VIII	Step IX	Maximum Rate
1974-1975 (Effective 3/1/74)											Schedule 2
1	2.89	3.04	3.20	3.26	3.31	3.36	3.42	3.47	3.53	3.58	3.65
2	3.05	3.20	3.36	3.42	3.47	3.53	3.58	3.63	3.69	3.74	3.84
3	3.27	3.42	3.58	3.63	3.69	3.74	3.80	3.85	3.90	3.96	4.08
4	3.55	3.68	3.75	3.81	3.88	3.94	4.01	4.07	4.14	4.20	4.27
5	3.77	3.90	3.97	4.03	4.09	4.16	4.23	4.29	4.35	4.42	4.52
6	4.00	4.13	4.19	4.26	4.32	4.39	4.45	4.52	4.58	4.65	4.71
7	4.11	4.26	4.33	4.41	4.49	4.56	4.63	4.71	4.79	4.86	4.94
8	4.43	4.58	4.66	4.73	4.81	4.88	4.96	5.04	5.11	5.19	5.27
9	4.67	4.82	4.89	4.97	5.05	5.12	5.20	5.28	5.35	5.42	5.50
10	4.90	5.06	5.13	5.21	5.29	5.36	5.43	5.51	5.59	5.66	5.74

Labor Grade	Minimum Rate	Step I	Step II	Step III	Step IV	Step V	Step VI	Step VII	Step VIII	Step IX	Maximum Rate
1975-1976 (Effective 3/4/75)											Schedule 3
1	3.09	3.24	3.40	3.46	3.51	3.56	3.62	3.67	3.73	3.78	3.85
2	3.25	3.40	3.56	3.62	3.67	3.73	3.78	3.83	3.89	3.94	4.04
3	3.47	3.62	3.78	3.83	3.89	3.94	4.00	4.05	4.10	4.16	4.28
4	3.75	3.88	3.95	4.01	4.08	4.14	4.21	4.27	4.34	4.40	4.47
5	3.97	4.10	4.17	4.23	4.29	4.36	4.43	4.49	4.55	4.62	4.72
6	4.20	4.33	4.39	4.46	4.52	4.59	4.65	4.72	4.78	4.85	4.91
7	4.31	4.46	4.53	4.61	4.69	4.76	4.83	4.91	4.99	5.06	5.14
8	4.63	4.78	4.86	4.93	5.01	5.08	5.16	5.24	5.31	5.39	5.47
9	4.87	5.02	5.09	5.17	5.25	5.32	5.40	5.48	5.55	5.62	5.70
10	5.10	5.26	5.33	5.41	5.49	5.56	5.63	5.71	5.79	5.86	5.95

* * *

APPENDIX C

HIGHLIGHTS OF ITT GILFILLAN PENSION PLAN FOR HOURLY EMPLOYEES

Effective Date		January 31, 1964 as amended through March 1, 1973
Eligibility for Membership		All regular hourly paid employees of the Company at specified locations on 1/31/64 will become members on after 1/31/64 provided after they are less than age 62. Regular hourly paid employees hired 1/31/64 become members when they complete three years of service and are less than age 65.
Normal Retirement Age		Age 65
Benefit	(a)	The sum of: $6.50/month per year of Credited Service on and after 3/1/74 + $4.25/month per year of Credited Service on and after 8/1/71 up to and including 2/28/74 + $4.00/month per year of Credited Service prior to 8/1/71 to a maximum of 18 years of Credited Service prior to 8/1/71. Total Credited Service shall be a combined maximum of thirty years and shall be those thirty years immediately preceding retirement.

(b) For retirements on and after 3/1/74 the normal retirement benefit under the plan shall not exceed 70% of "Final Earnings" including 70% of the annual Primary Social Security Benefit. For an employee with less than thirty years of Credited Service, such normal retirement benefit will be reduced proportionately, i.e. 2.33% of "Final Earnings" and 2.33% of Primary Social Security Benefits for each year of Credited Service less than thirty years. "Final Earnings" shall mean the average annual base compensation of a participant for the five highest consecutive years of Credited Service in the ten years of Credited Service immediately preceding retirement.

Disability Retirement

Eligibility — Age 50 and 15 years of Credited Service accumulated after 1/31/64.

Benefit — The sum of: $6.50/mo. per year of Credited Service on and after 3/1/74 +

$4.25/mo. per year of Credited Service on and after 8/1/71 up to and including 2/28/74 +

$4.00/mo. per year of Credited Service prior to 8/1/71 to a combined maximum of 30 years of Credited Service. Minimum Disability Benefit: $75/mo. payable to age 65. Disability pension is reduced by benefits payable under any Occupational Diseases Laws.

For disability retirements on and after 3/1/74 the disability retirement benefit under the plan shall not exceed 70% of "Final Earnings" including 60% of the annual Primary Social Security Disability Benefit. For an employee with less than 30 years of Credited Service, the maximum disability retirement benefit will be reduced proportionately, i.e., 2.33% of "Final Earnings" and 2% of Primary Social Security Disability Benefit for each year of Credited Service less than 30 years. The Social Security Benefit will be determined assuming the employee had attained age 65 as of his date of disability and the assumption will be made that the disabled employee is entitled to receive a Primary Social Security Disability Benefit. "Final Earnings" shall mean the average annual base compensation of a participant for the five highest consecutive years of Credited Service in the ten years of Credited Service immediately preceding retirement.

Vesting

Eligibility	Age 50 and 10 years of Credited Service.
Benefit	The sum of: $6.50/mo. per year of Credited Service on and after 3/1/74 + $4.25/mo. per year of Credited Service on and after 8/1/71 up to and including 2/28/74 + $4.00/mo. per year of Credited Service prior to 8/1/71 to a combined maximum of 30 years of Credited Service. For termination on and after 3/1/74 the vested pension benefit shall not exceed the normal retirement as determined under (b) above accrued to date of termination. The Primary Social Security Benefit will be determined assuming the employee had continued in service to age 65 at his rate of compensation in effect at his date of termination.
Minimum Benefit	A member with 15 or more years of Credited Service on 3/1/73 who reaches normal retirement from 3/1/73 to 3/1/76 will receive a pension equal to $4.25 per month per year of Credited Service up to a maximum of 19 years of Credited Service prior to 3/1/74 or a maximum of $80.75/month.

Early Retirement Eligibility	Company Option: On or after age 60. Employee Option with Company Consent: (i) Age 55 and 15 years of Credited Service or (ii) After age 60 if on the payroll on 6/1/67 and would have completed 15 years of Credited Service upon attainment of normal retirement date.
Benefit	Accrued normal pension benefit as determined under (a) above payable immediately actuarially reduced or accrued normal pension benefit payable at age 65 without reduction. Employees under (ii) above receive actuarial equivalent of $63.75 less $4.25 for each year retirement age is less than age 65. For early retirements on or after 3/1/74 the early retirement benefit shall not exceed the normal retirement benefit as determined under (b) above accrued to early retirement date, actuarially reduced if payable before age 65. The Primary Social Security Benefit will be determined at the time of early retirement assuming the employee had no earnings after his early retirement date, and integration with the early retirement pension benefit will be made at and after age 62.

Excerpts from Joint Trial Exhibit B
— UAW Constitution —

CONSTITUTION
of the
INTERNATIONAL UNION
United Automobile
Aerospace and
Agricultural Implement
Workers of America,
UAW

Adopted at
Los Angeles, California
June, 1974

TABLE OF CONTENTS

Art.		Page
	Preamble	3
1.	Name	4
2.	Objects	4
3.	Constitution	5
4.	International Union Headquarters	5
5.	Jurisdiction	5
6.	Membership	5
7.	Powers of Administration	9
8.	Conventions	10
9.	Political Requirements of Union Officials	16
10.	Officers and Elections	16
11.	Salaries	21
12.	Duties of the International Executive Board	22
13.	Duties of International Officers	26
14.	International Representatives	29
15.	Fiscal Year	30
16.	Initiation Fees and Dues	30
17.	Honorable Withdrawal Transfer Cards	37
18.	Unemployment and Welfare	39
19.	Contracts and Negotiations	40
20.	National and Corporation Bargaining Councils	41
21.	National and Regional Wage-Hour Conferences	42
22.	National and Regional Wage-Hour Councils	42

23.	Community Action Program Councils	43
24.	Competitive Shop Department	45
25.	Research Department	45
26.	Fair Practices and Anti-Discrimination Department	46
27.	Education Department	47
28.	Family Education Center Department	47
29.	Official Publication	48
30.	Charges and Trials of International Officers	49
31.	Trials of Members	51
32.	Public Review Board	58
33.	Appeals	62
34.	District Councils	66
35.	Amalgamated Local Unions	67
36.	Local Union Charters and Subordinate Bodies	68
37.	Duties and Powers of Subordinate Bodies	72
38.	Local Union Officers	74
39.	Installation Ceremony	78
40.	Duties of Local Union Officers	78
41.	Duties of Local Union Members	81
42.	Opening and Closing Ceremonies	82
43.	Initiation Ceremony	82
44.	Local Union Committees	82
45.	Shop Stewards and Shop Committeemen	83
46.	Local Union Finances	83
47.	Local Union Dues	83
48.	Local Union Audits	84
49.	Fraud in Local Union Elections	85
50.	Strikes	85
51.	Board of International Trustees	87
52.	Women's Auxiliaries	88
53.	Canadian Local Unions	89
54.	Union Label	89
55.	Retirees	90
	Ethical Practices Codes	93
	Subject Index	97

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ARTICLE 32
Public Review Board

Section 1. For the purpose of insuring a continuation of high moral and ethical standards in the administrative and operative practices of the International Union and its subordinate bodies, and to further strengthen the democratic processes and appeal procedures within the Union as they affect the rights and privileges of individual members or subordinate bodies, there shall be established a Public Review Board consisting of impartial persons of good public repute, not working under the jurisdiction of the UAW or employed by the International Union or any of its subordinate bodies.

Section 2. The Public Review Board shall consist of seven (7) members, including the chairman. Their terms shall be for the period between International Constitutional Conventions. At the Sixteenth (16th) International Constitutional Convention, and at the subsequent International Constitutional Conventions, the International President shall, subject to the approval of the International Executive Board, propose the names of the chairman and members of the Public Review Board for ratification by said International Constitutional Convention. Should any vacancy on the Public Review Board occur between International Constitutional Conventions, the vacancy shall be filled by appointment by the International President, subject to the approval of the International Executive Board, from a list of names submitted by the remaining members of the Public Review Board.

Section 3. (a) The Public Review Board shall have the authority and duty to make final and binding decisions on all cases appealed to it in accordance with Article 33 of the International Constitution, and to deal with matters related

to alleged violation of any UAW ethical practices codes that may be adopted by the International Union.

(b) The Public Review Board shall have the authority and duty to make final and binding decisions on all cases appealed to it in accordance with Article 16, Section 7, of the International Constitution.

Section 4. Any complaint filed under Sections 5(a) or (b) of this Article, alleging violation of any UAW ethical practices codes that may be adopted by the International Union, must be filed within sixty (60) days of the time the charging member first becomes aware or reasonably should have become aware of the alleged violation.

Section 5. To facilitate the orderly handling of complaints related to alleged violations of any UAW ethical practices codes, the following procedures shall apply:

(a) If a complaint is against the operation of a subordinate body or any officer or representative thereof, the complaint must be initiated by a member of that subordinate body who shall be obligated to first attempt to seek redress and correction of the matter complained of through appeal to the membership of the Local Union. Failing to get redress from the Local Union, the member shall submit his complaint to the International Executive Board through the International President who shall forward a copy of the complaint directly to the chairman of the Public Review Board. The International Executive Board shall have the initial responsibility for investigating the complaint. The chairman of the Public Review Board will be kept advised of the case by the International Executive Board. Upon completion of the International Executive Board's investigation and action, the chairman of the Public Review Board and the complaining member will be informed as to the disposition made

of the case by the International Executive Board. In the event the complaining member is dissatisfied with the decision and action of the International Executive Board, he may, within thirty (30) days, appeal such decision to the Public Review Board. In the absence of such an appeal, the Public Review Board may act on the matter if it concludes that there is substance to the original complaint and that the action of the International Executive Board does not satisfactorily meet the problem.

(b) If a complaint is against the operation of the International Union or any officer or representative thereof, the complaint must be made by a member of a Local Union and approved by membership action of that Local Union. The complaint and a certification of the approval shall be submitted to the International President who shall forward a copy of the complaint directly to the chairman of the Public Review Board. The complaint shall be processed by the International Executive Board and the Public Review Board in the same manner as a complaint under (a) above.

(c) However, if any member files a complaint under either Sections (a) or (b) above but does not seek approval, redress or action from his Local Union, he shall set forth the reasons for his failure to seek or obtain such approval, redress or action from his Local Union at the time he files his complaint with either the International Executive Board or the Public Review Board. When, in the judgment of the International Executive Board and/or the Public Review Board there are valid and substantial reasons for the request to bypass the Local step, the matter may be processed without compliance with the Local step.

(d) Any matter within the coverage of this Section may be submitted to the Public Review Board by majority action of the International Executive Board.

When a complaint is properly before the Public Review Board, the Public Review Board shall assume jurisdiction over the matter complained of and process the matter in accordance with the provisions of subsequent Sections of this Article.

Section 6. The Public Review Board shall formulate such rules of procedure and establish such practices as are necessary to facilitate its proper functioning. In order to minimize the time requirements and to expedite the disposition of cases, the chairman shall be authorized to create panels of not less than three (3) members of the Public Review Board to act for and in behalf of the Public Review Board. When, as a result of preliminary investigation, the Public Review Board, or the panel thereof, concludes that the complaint fails to state allegations sufficiently serious and substantial to justify a hearing, or when it appears that there is no reasonable possibility that any substantial evidence in support of the allegations can be produced, the Board or the panel, in its discretion may dismiss such matter without any hearing. The Public Review Board, or the panel thereof, shall advise the complaining member, the International Union, and any subordinate body or bodies concerned of its decision or findings.

Section 7. In case the Public Review Board or the panel thereof finds that the accused is obviously innocent of any violation of the ethical codes, the Board, or the panel thereof, may make judgment with respect to the lack of good faith of the accuser, and if the facts indicate that the accuser acted in bad faith or with malicious intent and in a willful effort to divide and disrupt the Union, the Public Review Board may assess a penalty against the accuser;

provided, however, that such penalty shall be limited to the following: a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00) with automatic suspension in the event of the failure of the member to pay the fine within a specified time; and/or suspension from membership for a period of not less than three (3) months.

Section 8. The Public Review Board shall prepare and submit to the membership an annual report of its activities, in which report it shall draw the attention of the membership to any situation or action which it has investigated upon complaint and found to be improper, and shall comment upon the steps that have been taken by the Union to correct such situation. The Public Review Board shall further include a summary of all appeals it has handled during the year. Copies of the Public Review Board's annual report shall be mailed to all Local Unions and notice of this fact shall be published in the next edition of Solidarity. Copies shall be available to members upon request and during convention years copies shall be distributed to all delegates. The annual report shall be made available to the public press and all other media of public communication. The Public Review Board may, in its discretion, submit an interim report. Such interim report shall also be made available to all members and the public in the same manner as the annual report.

Section 9. The International Executive Board is instructed and authorized to provide for an annual operating budget to insure the proper functioning of the Public Review Board. The International Secretary-Treasurer is instructed and authorized to deposit quarterly in a depository designated by the Public Review Board to the account of the Public Review Board the necessary funds required by the budget submitted by them. Such budget shall cover all necessary expenses,

including office, staff, travel and operating expenses, and shall provide for reasonable compensation to the members of the Public Review Board. The Public Review Board shall establish an office separate and apart from any union building. The staff and office personnel essential to the proper functioning of the Public Review Board shall be selected by the members thereof and shall be compensated out of its operating budget. The chairman of the Public Review Board shall be required to have its books and financial records audited annually; such audits and the summary of the financial transactions shall be submitted to the International Secretary-Treasurer, who in turn shall make such information available to the delegates at each Constitutional Convention.

ARTICLE 33
Appeals

Section 1. All subordinate bodies of the International Union, and members thereof, shall be entitled to the right of appeal. In all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified. The International President may, upon written application by an appellant waive in whole or in part requirements of such compliance, where unusual circumstances would warrant such waiver.

Section 2. Any member of any Local Union or unit of an Amalgamated Local Union who wishes to challenge any action, decision or penalty of that body or of any official or representative of that body must, in all cases and procedures where no other time limit is specifically set forth by this Constitution, initiate the challenge before the ap-

propriate body of such Local Union or unit within sixty (60) days of the time the challenger first becomes aware or reasonably should have become aware of the alleged action, decision, or penalty of that body.

Section 3. Any member of an Amalgamated Local Union wishing to appeal from any action, decision or penalty of his unit shall first appeal such action, decision or penalty to the Amalgamated Local Union's delegate body, where such exists, or the general membership meeting, where no delegate body exists. This appeal shall be taken by submitting a written notice of appeal to the Amalgamated Local Union's Recording Secretary within thirty (30) days of the unit's action, decision, or penalty being appealed from. The Amalgamated Local Union shall review the appeal, with the aid of an investigating committee or otherwise, and shall determine the appeal, but if a Unit Trial Committee is involved in the proceedings, it shall not select its own Trial Committee to retry the case. An appeal from the decision of the Amalgamated Local Union shall be carried to the International Executive Board.

Section 4. Any member or subordinate body appealing from any action, decision or penalty of any subordinate body, shall be permitted representation before any reviewing body by counsel of his own choice. The appellant and/or counsel shall be afforded full opportunity to present to any reviewing body the appellant's position on all matters bearing upon the action, decision or penalty under review; providing that this right to appear shall be limited to an appearance before a committee or panel of any reviewing body where the reviewing body has established the committee or panel to conduct a hearing and submit recommendations to the full reviewing body.

Section 5. Any member feeling himself aggrieved by any action, decision or penalty of his subordinate body shall be

entitled to appeal that action, decision or penalty to the International Executive Board only when it has been passed upon by the Local Union membership or delegate body, as the case may be; except where direct appeal to the International Executive Board from some action, decision or penalty of a body other than the Local Union membership or delegate body shall be specifically permitted by another Article of this Constitution. An appeal to the Local Union may be made at a meeting or in writing to the Recording Secretary. An appeal to the International Executive Board may be made without action by the membership or delegate body if the membership or delegate body does not meet and act on the appeal within forty-five (45) days following the appeal to the Local Union. When no membership or delegate body meeting is held during this forty-five (45) day period the Local Union Executive Board may consider and pass on the appeal.

Section 6. Any member wishing to appeal from the action, decision or penalty of his subordinate body shall do so in writing within thirty (30) days after the aforesaid action, decision or penalty. He shall send such appeal to the International Union President and should send a copy of the appeal to the Recording Secretary of the subordinate body. The appeal should set forth the action, decision or penalty being appealed and should include any and all information available in support of the appeal. The International President shall secure from the subordinate body a complete statement of the matters in issue, including copies of all charges, and any records, minutes, transcripts of testimony and other material relating to the appeal.

Section 7. (a) The International Executive Board shall appoint a two (2) member committee to consider the appeal and make recommendations. This two (2) member committee shall be composed of members of the International

Executive Board, but shall not include the Regional Director of the region from which the appeal originates. The appeal and any information secured by the International President, pursuant to Section 6 of this Article, shall be forwarded to the committee. After a review of the appeal the committee may hold a hearing, before either the full committee or, in its discretion, one of its members, unless the committee concludes that no useful purpose would be served by a hearing, in which event the committee, in its discretion may make recommendations on the appeal without a hearing. If a hearing is held, it shall be held as close to the locality from which the appeal originates as is possible in order to minimize expense and inconvenience to the appellant. The appellant and appellee (or their representatives) shall be required to appear before the Appeals Committee, with such counsel and witnesses as they may choose, and shall answer fully and truthfully all questions put to them by members of the Appeals Committee. The extent and scope of the hearing shall be such as in the discretion of the committee shall bring to light all facts and issues involved. The appellant and/or appellee shall each be entitled to submit any briefs or any other written statements of position that either of them may wish. The committee shall consider the files and records of the case, and such briefs as may be submitted by either side. Based upon this consideration, the Appeals Committee shall make a recommendation which, together with all of the aforesaid documents, shall be submitted to a nine (9) member committee of the International Executive Board, of which five (5) members shall constitute a quorum. The nine (9) member committee of the International Executive Board shall consider said documents, together with the Appeals Committee recommendation, and shall make a decision on the appeal.

(b) The International President may decide an appeal, rather than submitting it to a two (2) member committee of the International Executive Board, if he concludes that such procedure is appropriate. In such case, the International President may designate a representative to conduct any investigation or hearing deemed necessary, in accordance with the procedures set forth in subsection (a) hereof. The International President shall base his decision on the files and records of the case, and such briefs as may be submitted by either side.

(c) Both where the appeal has been decided by the nine (9) member committee of the International Executive Board and where it has been decided by the International President, copies of the decision shall be sent to all members of the International Executive Board and the decision shall become the decision of the International Executive Board unless, within ten (10) days, one or more members of the International Executive Board shall raise an objection to the decision, in which case the appeal shall be referred, for decision, to the International Executive Board at its next regular meeting. The International President shall promptly notify all parties concerned of the decision of the International Executive Board. The International Executive Board shall use its best efforts to render its decision within sixty (60) days of receipt of the appeal by the International President.

Section 8. Any subordinate body or member thereof wishing to appeal from any decision of the International Executive Board or an International Trial Committee may, in all cases, take such appeal to the Constitution Convention Appeals Committee of the International Union. The Convention Appeals Committee shall have the authority to consider and decide all appeals submitted to it from decisions of the International Executive Board and International Trial Com-

mittees under this Section. All decisions of the Committee shall be final and binding.

The Constitution Convention Appeals Committee shall consist of a member and a first and second alternate from each region selected by lot from the delegates when they elect their Regional Director. At the 23rd Constitutional Convention half the regions shall select members and alternates to serve on the Committee for a two (2) year term and half shall select members and alternates to serve for a four (4) year term. It shall be decided by lot which regions are to select for a two (2) year term and which are to select for a four (4) year term. At each succeeding Constitutional Convention the regions whose members' terms then expire shall select members and alternates to serve for a four (4) year term. In the event a vacancy occurs on the Committee, it shall be filled by the ranking alternate from that region. All remaining vacancies shall be filled by lot at the next Constitutional Convention.

The Convention Appeals Committee shall meet semi-annually, at International Union Headquarters, to act upon all appeals that have been submitted under this Section at least thirty (30) days prior to the date established for their meeting. The administrative procedures for the Convention Appeals Committee shall be established by the International Executive Board, subject to review by subsequent regular Constitutional Conventions.

The appellant shall, however, have the alternative of appealing such decision of the International Executive Board or an International Trial Committee to the Public Review Board established in Article 32 of this Constitution in the following cases:

(a) Any case arising under the procedure set forth in Article 10 (Section 13), Article -12 (Sections 2 and

3), Articles 30 and 31, Article 33 (Sections 9 and 12), Article 36 (Sections 9 and 10), Article 38 (Sections 11 and 12), Article 48 (Sections 5 and 6) of this Constitution, or

(b) Those cases decided by an administrative arm of the International Executive Board, pursuant to Article 12, Section 17, or by the International Executive Board, which concern action or inaction relative to the processing of a grievance, in which the appellant has alleged before the administrative arm or the International Executive Board that the grievance was improperly handled because of fraud, discrimination, or collusion with management.

(c) In any other case in which the International Executive Board has passed upon an appeal from the action of a subordinate body.

Section 9. Regardless of which alternative the appellant decides to utilize, he must take the appeal within thirty (30) days of notification of the International Executive Board's decision, (unless such time is extended by the International Union President, where, in his opinion, justice will be served by such an extension), by serving a notice of appeal upon and filing a written statement of his reasons for appeal with the International President.

Section 10. If the appellant elects to appeal to the Public Review Board, the appeal shall be considered by the Board or a panel thereof. The International President shall forward to the chairman of the Public Review Board all documents and records in the case. After studying said documents and records, the Board or the panel shall hold a hearing; provided that where the Board or panel concludes after preliminary consideration and/or investigation that the appeal is insubstantial or that no useful purpose would be served by a

hearing, the Board may, in its discretion, decide or dismiss the appeal without a hearing. The extent and scope of the hearing, as well as other matters of procedure and timing, shall be controlled by the rules of procedure which shall be established for such hearings by the full Board pursuant to Article 32, Section 6.

Section 11. The Board or panel thereof shall, upon due consideration, issue its decision which shall be final and binding upon all parties. In cases coming within Section 8 of this Article, with the exception of cases concerning the processing of grievances, the Board or panel shall decide and dispose of all matters raised by the appeal. In cases that do involve the processing of grievances, the Board or panel shall first determine whether the specific allegation upon which the appellant claims the Board's or panel's jurisdiction to be based is, or is not, true. If such allegation is found to be true, the Board or panel shall proceed to dispose of all facets of the appeal; provided that in no event shall the Public Review Board have the jurisdiction to review in any way an official collective bargaining policy of the International Union. If the Board or the panel shall decide that such jurisdictional allegation is not true, it shall dismiss the appeal in which event the appellant shall, within thirty (30) days of notification of such dismissal, be entitled to appeal the matter to the Constitutional Convention of the International Union; provided that in such appeal, the appellant may not again raise any issue which the Board or the panel negated in its decision dismissing for lack of jurisdiction.

Section 12. It shall be the duty of any member or subordinate body who feels aggrieved by any action, decision,

or penalty imposed upon him or it, to exhaust his or its remedy and all appeals therefrom under the laws of this International Union prior to appealing to a civil court or governmental agency for redress.

* * *

Joint Trial Exhibit C
— Letter of Ralph S. Gazzigli —

July 11, 1975

Mr. Norman L. McCracken
Field Examiner
National Labor Relations Board
Region 31
11000 Wilshire Boulevard, 12th Floor
Los Angeles, California 90024

Dear Mr. McCracken:

After a most thorough investigation, and acting as a duly authorized International Representative of the UAW, my conclusion in regards to Mr. Clifford Clayton's termination from employment on February 14, 1975 at ITT Gilfillan was for just cause and in no way was a result of Mr. Clayton's Union activities, as Mr. Clayton contends.

Therefore, the Union will not take any further action on Mr. Clayton's grievance numbered 24060.

Briefly, this conclusion was based on the following:

A. Mr. Clayton was not acting in any capacity as a Union Representative at the time of the incident resulting in his discharge.

B. Although Clifford Clayton considers his actions to be trivial, the Union cannot and will not condone the distribution or possession of lewd pictures, books, devices, etc., on an employer's premises.

C. Mr. Clayton's testimony directly conflicts with two (2) eye witnesses to the event in question.

D. Not one of the other three people directly involved and present at the time of the incident will corroborate Mr. Clayton's version.

E. Clifford was fully aware of Company rules and had possession of same which clearly states, and I quote:

"Violations for which the employee will be suspended with a recommendation for discharge pending results of an investigation include, but are not limited to the following.....

(4) Immoral or indecent conduct."

I find this whole incident to be very unfortunate and distasteful. The UAW policies and philosophy has been and will remain to improve and provide a clean, safe and pleasant working environment. Mr. Clayton, as an elected representative, indeed, should have striven to set an example for his fellow employees. He took an oath to help provide and strive for those very goals.

However, this particular incident, I believe, based on my investigation, clearly shows that Mr. Clayton was not acting in a manner that his fellow employees, or employer, should be forced to tolerate, and in no way was related to Mr. Clayton's activities or position as a Union Steward.

Respectfully,

/s/ R.S.G.
Ralph S. Gazzigli
International Representative

RSG:ces
opeiu 42

cc: Clifford Clayton
Jack Milligan
Lois Casey

Excerpts from Joint Trial Exhibit E
— Affidavit of Jerry Dale —

In the United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, v. I.T.T. Gilfillan, a Division of International Telephone & Telegraph Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 509, Defendants. No. 76-0730-IH.

AFFIDAVIT OF JERRY DALE

With Attached and Incorporated Exhibits

No. 2 Solidarity, July 1966, p. 6;
No. 3 Solidarity, October 1967, p. 12;
No. 4 Solidarity, September 1968, p. 5;
No. 5 Solidarity, September 1970, p. 4;
No. 6 Solidarity, September 1971, p. 4;
No. 7 Solidarity, September 1972, p. 5;
No. 8 Solidarity, December 1973, p. 6;
No. 9 Solidarity, October 1974, p. 6;
No. 10 Solidarity, December 1975, p. 4;
No. 11 Solidarity, January 1977, p. 10.

In the United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, v. I.T.T. Gilfillan, a Division of International Telephone & Telegraph Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 509, Defendants. No. 76-0730-IH.

AFFIDAVIT OF JERRY DALE

With Attached and Incorporated Exhibits

STATE OF MICHIGAN)

)ss.

COUNTY OF WAYNE)

The undersigned, Jerry Dale, now being first duty sworn, on oath, deposes and says as follows:

I am employed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as Assistant Director of the Public Relations and Publications Department. I make this affidavit upon my personal knowledge.

With the exception of unprocessed address changes, each and every dues paying member of the UAW receives a copy of a newspaper published by the International Union (UAW) known as Solidarity. This has been the practice for many years, including between 1971 and today.

Copies of that publication which specifically refer to rights of members to appeal under the International Constitution are attached hereto and incorporated by this reference as Defendant Union's Exhibits No. 2, Solidarity,July 1966, p. 6; No. 3, Solidarity, October 1967, p. 12; No. 4, Solidarity, September 1968, p. 5; No. 5, Solidarity, September 1970, p. 4; No. 6, Solidarity, September 1971, p.

4; No. 7 Solidarity, September 1972, p. 5; No. 8, Solidarity, December 1973, p. 6; No. 9, Solidarity, October 1974, p. 6; No. 10 Solidarity, December 1975, p. 4; No. 11 Solidarity, January, 1977, p. 10.

Further Affiant sayeth not.

/s/ JERRY DALE
Jerry Dale

Subscribed and sworn to before me
this 25 day of February, 1977.

/s/ ELIZABETH PILOT
Elizabeth Pilot
Notary Public, Wayne County, Michigan
My Commission Expires September 17, 1980.

(Excerpts from *Solidarity* identified as Affidavit Exhibits Numbers 2-8 and 10-11 have been omitted in printing)

Exhibit No. 9
Solidarity, page 6
October, 1974

MORE MEMBERS ARE USING THE PRB, AGAIN PROVING ITS VALUE

'The UAW is almost unique . . . in voluntarily, on its own initiative, setting up this kind of Public Review Board and handing over to seven outsiders . . . the authority to make binding decisions.'

— Msgr. George C. Higgins

By Bobbie Barbee

More and more UAW members are becoming aware that the internal remedies and procedures for seeking justice in the UAW are within easy reach of anyone who feels he or she has been wronged through some action or inaction of the union.

Now going into its 18th year of existence since its creation by action of the delegates to the 16th Constitutional Convention of the UAW in April 1957, the Public Review Board has been an invaluable addition to the democratic safeguards inherent in the UAW Constitution.

In the recent submission of its 16th annual report to the membership of the UAW, the PRB noted that, during 1973, it had acted on 35 appeals, the highest number ever decided within a yearly period since its inception.

A total of 318 formal appeals has been filed with the PRB since its creation. The PRB has also been of inestimable value to additional hundreds of members by offering advice

and help on the numerous informal complaints and inquiries that are daily directed to its attention.

"This increased use of the PRB by our members is consistent with the times," said UAW Pres. Leonard Woodcock. "More importantly, it testifies to the awareness of our membership of the existence of the PRB and of its value."

Not Costly

The price of seeking justice in the UAW is not tied to the individual's pursestrings either. The various appeals procedures are generally processed within or near the locale of the appellant, whenever possible. During 1973, the PRB reported expenses of $98,806.53.

In presenting the report to the UAW's 24th Constitutional Convention, the PRB chairman, Msgr. George C. Higgins, secretary for research for the U.S. Catholic Conference, remarked that the creation of the PRB "was an extraordinary innovation, so extraordinary that even to this day few, if any, other institutions in American life are even considering going that route . . . We have never had anything but the most complete and honest and above-board cooperation from all of your officers and local union officials."

In serving as one of the supreme appellate tribunals of the UAW, the PRB has authority equal to that of the Constitutional Convention Appeals Committee (CAC), except in the area of collective bargaining appeals. However, the PRB, composed of seven distinguished, impartial, independent individuals completely outside the employ or influence of the UAW, is in daily operation. The CAC meets every six months. It is a body of 18 UAW members representing each region, nine of whom are selected by lot at each convention.

The members of the PRB serve on a convention-to-convention basis and are authorized to rule on any decision or dispute arising within the union as set forth under Article 33, Section 8 of the International UAW Constitution.

"Almost unique"

"The UAW is almost unique — not only in the labor movement but in all American life," said Msgr. Higgins, ". . . in voluntarily, on its own initiative, setting up this kind of Public Review Board and handing over to seven outsiders . . . the authority to make binding decisions on charges brought by you, the members, against your locals, or your regional groups, or your International, of violations of your Constitution."

Commented Woodcock: "Not only has our union accepted the concept of public review, we have also commended it to others.

"We are . . . proud to have pioneered in the concept of public review. We continue to be deeply grateful to the men and women of the board who give so unselfishly of their time to assist our union in achieving its goal of 'a more perfect union'."

PRB members

Presently comprising the panel of "impartial persons of good public repute" who serve on the PRB, in addition to Msgr. Higgins, are: Prof. Harry W. Arthurs, dean of the Osgoode Hall Law School at York University in Toronto, Canada; Prof. James E. Jones Jr., director of the Industrial Relations Research Institute at the University of Wisconsin; the Hon. Frank W. McCulloch of the University of Virginia Law School; Dr. Jean T. McKelvey, professor at the New York State School of Industrial and Labor Relations of Cornell University; Dean Theodore J. St. Antoine, Law school

dean at the University of Michigan, and Rabbi Jacob J. Weinstein, rabbi emeritus of K.A.M. Isaiah Israel Congregation in San Francisco, Calif. Attorney David Y. Klein is executive director of the PRB.

The PRB's staff and facilities are available to UAW members by letter, telephone or personal visit to the board headquarters: 23725 Northwestern Highway, Southfield, Mich. 48075; Telephone 313/354-5558.

The CAC

How Convention Appeals Committee works

In its recent report to the 24th Constitutional Convention, the Convention Appeals Committee (CAC) noted that it had acted on 11 cases "involving a variety of claims and challenges."

The CAC, like the Public Review Board, has full jurisdiction over matters submitted to it. However, the PRB is limited in its review of any official collective bargaining grievances of the International Union unless fraud, discrimination or collusion is alleged in the appeal.

The CAC, which meets at six-month intervals, is a peer group of 18 UAW members, one from each region. To provide continuity, half the group is selected by lot at each convention from the delegates attending each regional election. Each serves for two convention terms. Two alternates to each member are elected at the same time.

The members who served on the CAC during the past term and participated in the hearings which were reported to the 1974 Convention were: Chairman, Aaron B. Johnson — Region 1D; secretary, Roxie Elardo — Region 2; Chester Peuterbaugh — Region 1; Robert Battle III — Region 1A; Norman Scaglione — Region 1B; Kenneth Johnson — Region 1C; Steve Protulis — Region 1E; Don Millennor —

Region 2A; Mary Lou Campbell, Ray Futrell, alternate — Region 2B; John Yentes — Regions 3; Joe Wahl — Region 4; Henry C. Hall — Region 5; Jesse Corbertt — Region 6; Gary Lilley — Canadian Region; Gene A. Brown — Region 8; John T. Farcas — Region 9; Calvin J. LaPierre, Paul Amenta, alternate — Region 9A; Michael T. Devine — Region 10.

New members

At the June convention, nine regions selected the following members and alternates to serve for the next two terms on the CAC with the holdover members from the nine other regions:

Region 1 — Mae Baumann and alternates, Joe Vassalo, Corsie Childers;

Region 1A — Nelson Hill, Macon Bomar, Dorothy E. Jones;

Region 1B — Bruce Grimes, Jerry Sudderth, John Batsko Jr.;

Region 1D — Ted M. Scoggins, Howard Miller, James E. Jackson;

Region 2A — John Revella, Sam Allmond, Tony Placenti;

Region 5 — Charles Jarvis, E. W. Adkins, Harold Bahrenburg;

Region 9 — James J. Wood, Marvin Washington, Francis DeAnthony;

Region 9A — Gerald Dankulich, Thomas F. Curtin, Robert M. Kushnier;

Region 10 — Edward Merten, William F. Brunton, William Herzog.

In order to provide additional appeals procedures for aggrieved members, the UAW Constitution also provides that

the president, at his discretion, may decide an appeal rather than submit it to an Appeals Committee.

The International Executive Board may act upon an appeal when a local membership or delegate body fails to meet or act upon an appeal within 45 days of submission. In each of these instances, however, the action still may be appealed further to either the CAC or to the PRB, but not to both. Decisions rendered by the PRB and CAC are final.

The UAW Constitution's internal remedies provisions cover virtually any claim arising from the day-to-day operations of the union. An initial appeal is made to the general membership of the local (or unit). If unsatisfied, the member may submit a written appeal within 30 days to the IEB in care of the International president.

A written decision of the IEB or the UAW president may then be appealed further to the CAC or PRB, if the member still is unsatisfied.

Joint Trial Exhibit F-1
— Decision of Public Review Board —
— No. 13 —

The Public Review Board, International Union, UAW.

Appeal of: Local 469 (Master Lock Co., Milwaukee), In Re Agatha Praniewicz, Pub. Rev. Bd. Case No. 13

DECISION OF THE BOARD

(Issued May 23, 1958)

PANEL SITTING: Adler, Chairman; Hanrahan and McCree, Members

A hearing was held in this matter on February 12, 1958, in Milwaukee, Wisconsin, before a hearing examiner appointed for the purpose by the Public Review Board. Evidence and arguments were presented at that time by Local 469, Agatha Praniewicz, and the International Union, represented respectively by Gollmar Svenson, Local President, A. A. Hindin, attorney at law, and Raymond Berndt, Regional Director, Region 3. At the conclusion of the hearing, all parties waived further argument, oral or written, before the Public Review Board. Accordingly, the Board has considered this case, through a panel constituted in accordance with Article 31, Section 5, on the basis of the record made at the said hearing and the prior record resulting from the actions of the Union tribunals in the matter.

Nature of the Appeal

This case is before the Public Review Board on the appeal of Local 469 from a decision of the International Executive Board rendered March 7, 1957. The latter decision, in substance, directed the Local to pay Agatha Praniewicz the sum of $800, this being found to be the total wages lost by her between the date of her discharge by the Master Lock Company, whose employees are represented by Local 469, and

her obtaining of other work. The basis for the award was a finding that the discharge was prompted, at least in substantial part, by the Local itself as a result of complaints made against Mrs. Praniewicz by some of her fellow workers, and that in connection with these complaints Mrs. Praniewicz was not afforded the protection to which she was entitled under certain provisions of the International Constitution.

The Local contested this decision on the merits and, as the result of a show cause hearing before the International Executive Board on October 9 as to why it had not complied with the March 7 order, was granted the right of delayed appeal to the Public Review Board under Article 32, Section 9.[1] This right of delayed appeal was conditioned on the Local's first complying with the March 7 decision of the International Executive Board, as required by Article 32, Section 1,[2] by paying the $800 into escrow. That amount has been paid over to Regional Director Harvey Kitzman, Region 10, for disposition in accordance with the decision of the Public Review Board on this appeal.

It is thus apparent that the question of what relief the Public Review Board could itself require of the Local Union under the facts is not presented in this case. Nor is the question of the International Executive Board's power to require the payment of damages by a Local to one of its members. As the Public Review Board views the record, the parties have in effect stipulated to the relief to be granted in the event of a decision against the Local; the sole question before the Board, therefore, is whether the decision should go for or against Local 469.

Statement of Facts

Agatha Praniewicz was laid off by the Master Lock Company along with other employees in mid-January of 1954. On March 1, 1954, after the Company had started recalling

some of the employees, Mrs. Praniewicz testified that she telephoned the employment office to inquire when she would be recalled and was informed by the Personnel Manager that her recall was being held up at the request of officers of Local 469 because of a number of grievances filed with the Union by women with whom she worked. On March 2, 1954, the Executive Board of Local 469 held a meeting at which Mrs. Praniewicz was invited to be, and was, present. Statements signed by seven fellow workers to the effect that her loud, abusive talk was a disturbing influence in the department were shown to her by the Local President, Gollmar Svenson. She was asked whether she had anything to say with respect to them and responded by demanding a trial in accordance with the International Constitution.

On March 3, 1954, Kenneth Blockwitz, Recording Secretary of Local 469, speaking for the Local Executive Board, answered Mrs. Praniewicz' demand in the following letter:

"Dear Mrs. Praniewicz:

"This letter is to inform you of the outcome of Grievance #B 84577, filed against you by several of your fellow employees.

"The Executive Board of Local #469 wishes to inform you that after due consideration of all the facts presented it has been decided against you. After meeting with you on Tuesday, March 2, 1954, a vote was taken and a unanimous decision was reached by all of the Executive Board.

"This decision was based upon the fact that after the charges against you were presented to you, you neither denied nor refuted any of them when you were given the chance, therefore it was assumed that they were true.

"A meeting with Management was held on March 3, 1954 when our decision was passed on to them, and your name has been dropped from the Seniority List of the Master Lock Company.

"Since the decision reached went against you, we have no alternative except to send you a withdrawal card from our Local."

In a letter dated March 8, 1954, the Personnel Manager of the Master Lock Company wrote Mrs. Praniewicz as follows:

"Dear Mrs. Praniewicz:

"This is to notify you that you have been discharged and your employment with our company has been terminated, so that your name has been dropped from our seniority list.

"This action was taken because of your disloyalty and because of the number of grievances filed against you for misconduct while in our employ."

On March 12, 1954, Mrs. Praniewicz wrote to Recording Secretary Blockwitz, renewing her request that the Local "follow the procedure of the Constitution of the International Union, UAW-CIO — Article 48 [now Article 30], so that I can return to my job and have my seniority rights restored."

On March 18, 1954, Blockwitz answered the foregoing letter as follows:

"Dear Mrs. Praniewicz:

"In answer to your letter dated March 12, 1954, in regard to your discharge from the Master Lock Co., I wish to state that this matter is now out of our hands. The Grievance filed against you has been closed and our decision relayed to you.

"After having checked over the entire Article 48 of the International Constitution, and also having checked

with our International Representative, Mr. Frank Sahorske, we find that if you do not agree with this decision you have the right to make an appeal through the International Union."

Mrs. Praniewicz subsequently brought her case to the attention of the Women's Bureau of the Fair Practices and Anti-Discrimination Department of the International Union. The Women's Bureau investigated the matter and after consultation with the officers of Local 469 convinced them that the Local Union should negotiate with the Master Lock Company for appellant's reinstatement and back pay. Accordingly, at meetings on September 11 and November 10, 1954, the membership of Local 469 was led to reconsider the Praniewicz matter. It concluded, however, to reaffirm the original position of the Local, namely, that any further action must come from Mrs. Praniewicz. The position of the Local officers as a result of this decision of the membership was presented by Recording Secretary Blockwitz in a letter of September 22, 1954, to the Assistant Regional Director, Frank Sahorske. Reporting the aforesaid result of the September 11 membership meeting, Blockwitz wrote: "Since, we, the Executive Board, of any Union are only the mouthpiece of the entire union, we have no recourse except to maintain this position."

This effort via the Women's Bureau of the International Union having thus proved fruitless, the case was returned to the normal appeal procedures and a hearing held on January 3, 1957, before an Appeal Committee of the International Executive Board. (The delay between consideration by the Women's Bureau and this Appeal Committee hearing was apparently occasioned by the serious illness of International Vice-President Norman Matthews, who was the original chairman of the three-man Appeal Committee.)

The Appeal Committee's recommendation, after hearing, was as follows:

> "In light of the fact that Sister Praniewicz has advised the committee that she does not wish to return to employment at the Master Lock Company at this late date, the Appeals Committee recommends that the officers of Local 469, in conjunction with a representative of the Region 10 Office, meet with the management for the purpose of
>
> "(a) Obtaining a letter from the management which will completely nullify the letter sent to Sister Praniewicz on March 8, 1954.
>
> "(b) Obtaining a communication from management addressed to Sister Praniewicz which will indicate that she is a desirable employee and that the Master Lock Company would at any time in the future consider her application for re-employment.
>
> "(c) Negotiating with management for payment of $400.00 which would cover one-half of the monies lost by Sister Praniewicz.
>
> "Further that the Local Union, upon completion of these negotiations, pay to Sister Praniewicz $400.00 which represents the second half of monies lost by Sister Praniewicz, and should the Local Union fail to obtain monetary relief as suggested above for Sister Praniewicz by the company, the Local Union is hereby directed to pay the full amount of $800.00."

The foregoing recommendation of the Appeal Committee was adopted by the International Executive Board on March 7, 1957. Upon Local 469's failure to comply with this decision, the local officers were directed, pursuant to Article 12, Section 2,[3] to appear before the International Executive Board on October 9, 1957, to show cause why they had not complied. (The apparent sanction in the offing was the appointment of an administrator under Article 12, Section 2,

who would take over the assets of the Local long enough to pay the $800 to Mrs. Praniewicz, returning control thereafter to the Local officers.) In the course of the show cause hearing, President Reuther worked out an arrangement with the officers of Local 469 whereby the Local Union would be accorded the right to appeal the matter to the Public Review Board (its time for such appeal being extended by the International President under Article 32, Section 9) on condition that it first comply with the March 7 decision of the International Executive Board, as required by Article 32, Section 1, by paying the $800 into escrow.

Decision

In the view taken by the Public Review Board, the essential issue presented on this appeal is whether Agatha Praniewicz was accorded the procedural due process guaranteed to her as a member of the Union under the International Constitution. After careful consideration of the record, the Board is convinced that Mrs. Praniewicz was not accorded such Union due process.

She was denied the trial to which she was entitled under Article 48, Section 3[4] of the 1953 Constitution, then in effect: no trial committee was constituted as called for by Section 7;[5] she did not receive the notice of charges against her required in Section 4,[6] nor of time and place of hearing required in Section 8;[7] she was given no opportunity to confront her accusers, etc. Such "hearing" as she had was that conducted by the Local Union Executive Board on March 2, 1954, when they called her into a meeting on less than a day's notice without adequately apprising her of its purpose, presented her with a list of complaints made against her by certain fellow workers, then absent, and asked her what she had to say. Her specific requests for a trial in accordance with Article 48 (now Article 30) were ignored

on the ground that the Local officers had accorded her all the rights she was entitled to and that anything further she might desire in that regard would have to be achieved by her by way of appeal.

From the testimony of the officers of the Local appearing in the record, it seems amply clear that what was done was not motivated by malice but rather resulted from failure to comprehend the importance of adherence to the trial procedure prescribed in the International Constitution. The very purpose of the latter is to protect to the fullest the rights of an individual member against error that might more easily occur in a less formal type of hearing, such as that held by this Local on March 2, 1954. In seeking to explain and justify the procedure actually followed, the Local President drew a purported distinction in his testimony between "charges" against a Union member, which he conceded to be properly dealt with under the Article 48 procedure, and "grievances" against the member, which he insisted would not require such meticulous handling. While not intending to indicate an understanding of this distinction,[8] the Board is convinced that, whether under the label of "charges" or "grievances", the course taken by the Local deprived Mrs. Praniewicz of her right to a full and fair trial under Article 48.

The finding of the International Executive Board to the same effect is accordingly affirmed and this appeal decided in favor of Agatha Praniewicz.

The relief to be afforded Mrs. Praniewicz in the event of a decision in her favor has been stipulated by the parties, as aforesaid, an award of $800 being held in escrow by Regional Director Harvey Kitzman. Pursuant to that stipulation, the said sum is to be paid over to Mrs. Praniewicz upon receipt from her of an acknowledgement of satisfaction

of her claim against Local 469 growing out of her discharge by the Master Lock Company.

****

FOOTNOTES

1. Article 32, Section 9 provides that the appellant "must take the appeal within thirty (30) days of notification of the International Executive Board's decision, (unless such time is extended by the International Union President, where, in his opinion, justice will be served by such an extention). . . ."

2. Article 32, Section 1: "All subordinate bodies of the International Union, and members thereof, shall be entitled to the right of appeal. In all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified."

3. Article 12, Section 2: "The International Executive Board shall have power to revoke charters and to reorganize subordinate bodies in one of the two following manners:

***

> "(b) For violation of this Constitution or of the laws of this International Union, or in case of disputes within any subordinate body affecting the welfare of its membership or its existence, the International Executive Board may, by two-thirds (2/3) vote of the entire Executive Board, after a hearing, revoke the charter or suspend any officer or officers from office and take over supervision of the subordinate body until its affairs have been properly adjusted. . . ."

4. Article 48, Section 3 (1953 Constitution): "Upon charges being submitted, it is mandatory that a trial be held, unless the charges are withdrawn by the accuser."

5. Article 48, Section 7 (1953 Constitution): "The accused member shall be tried by a Trial Committee consisting of at least seven (7) members, and such additional members as may be chosen to act as alternates, who shall be elected by the Local Union, or, in the case of an Amalgamated Local Union, by the Shop Organization, at the next membership meeting, which shall be not later than forty-five (45) days from the time the charges were submitted. A Trial Committee shall be separately elected for the trial of each case."

6. Article 48, Section 4 (1953 Constitution): "A member against whom charges have been filed shall be notified of such charges by receipted registered mail within seven (7) days after the charges have been submitted to the Local Union. . . ."

7. Article 48, Section 8 (1953 Constitution): "Within seven (7) days after the Trial Committee has been elected, the accused member shall be notified of the time and place of the trial, which shall be held not less than fifteen (15) days nor more than thirty (30) days from the date of his receipt of such notification . . ."

8. The confusion of the Local officers is evidenced by the following excerpt from the Statement of Reasons for Appeal filed by them with the Public Review Board:

> "Did the Local Union act Properly under provisions of the 1954 [1953] Constitution in deciding a trial was unnecessary and not required where its Executive Board (9) members found that voluntary grievances filed by some of its members against one Union Member, for her acts of misconduct were true (and the Union membership several times approved such Executive Board action) and no formal charges asking for a trial were filed by anyone?
>
> "We maintain our Local #469 acted properly in 1954 since there were no charges filed on which to

have a 'trial' and our Executive Board reviewed and passed on the grievances, all Constitutional provisions then in effect were followed. It appears to us that the intent of Article 48 (now Article 30) of the Constitution in providing for a trial was for a charge against a member who violated the Constitution of the Union, or engaged in conduct harmful to the Union, and not for a 'trial' on every grievance for misconduct against fellow workers or the Company.''

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Joint Trial Exhibit F-2
— Decision of Public Review Board —
— No. 192 —

The Public Review Board, International Union, UAW.

Jim Pfeiffer, Plaintiff-Appellee, v. Local 556, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Defendant-Appellant. Case No. 192

DECISION

(Issued October 18, 1968)

PANEL SITTING: Rt. Rev. Msgr. George G. Higgins, Chairman; Professor Harry W. Arthurs, Dr. Henry Hitt Crane, Professor R. W. Fleming, Judge George N. Leighton, Dr. Jean T. McKelvey and Rabbi Jacob J. Weinstein, Members.

Local Union 556, Racine, Wisconsin, appeals a decision of the International Executive Board (IEB) holding that the Local improperly represented Jim Pfeiffer, one of its members, in the processing of his grievance. The IEB ordered the Local to reimburse the member in question for the loss of wages which he sustained as a result of the failure of the Local to process his grievance and the Local has undertaken compliance.[1] At the request of the Local Union, oral argument before a panel of the Board was heard on August 17, 1968, in Chicago, Illinois.

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[1]As of August 17, 1968, the Local had paid Mr. Pfeiffer $4,000.00 of the $4,897.00 which the International Executive Board concluded was owing him.

I.

Jim Pfeiffer, the aggrieved, is a former president of Local 556. On July 16, 1966, while serving his term as president, Pfeiffer was elected business agent of the Hotel and Restaurant Employees and Bartenders Union Local No. 322, a full-time, paid position. Pursuant to Section 705 of the Collective Bargaining Agreement,[2] he requested a leave of absence from the Jacobson Manufacturing Company, which request was granted.[3] His letter of request indicated no specific duration of the leave.

In May, 1967, Pfeiffer terminated his employment with the Hotel and Restaurant Employees Union and advised the Company that he desired to cancel his leave and return to work. This request was denied, the Company taking the position that Pfeiffer had been granted a leave of absence for two years and, therefore, he could not return until the

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[2]Section 705 of the Collective Bargaining Agreement provides:

"At the request of the Union, a leave of absence for a period of two (2) years shall be granted by the Company to any one (1) employee in any year elected to Union Office."

[3]The Company also had on file an unsigned Request for Leave of Absence form concerning Pfeiffer's request. In relevant part it reads as follows:

"I request a leave of absence for the period and reason indicated below:

Time off requested: from July 18, 1966, to July 18, 1968, inclusive.

Reason for request: to accept Union Office for a two-year period as specifically covered in 7.05, Employees to Union Offices, in the Current Labor-Management Agreement.

"I understand this leave, if granted, will be subject to the following conditions: My employment will terminate if I do not return to my job on xxxx the first work day after this week it expires. If an emergency prevents my return, I will immediately request a renewal of this leave. The Company may or may not grant such request, depending upon the facts."

The x'd portion reads: "or before" and, as previously observed, the request form is not signed.

end of this period. Pfeiffer grieved. The grievance was denied by the Company for the reason previously stated, whereupon Pfeiffer requested that the matter be submitted to arbitration. The Local Union consulted its attorney who, according to the Local Union, advised that there was, in his opinion, only a fifty-fifty chance of winning the claim.

The Local Executive Board on June 19 voted not to arbitrate the case. On June 23, Sam Rizzo, Sub-Regional Director, wrote Howard Greene, who was then president of Local 556, indicating that in his opinion the grievance warranted exhausting through the arbitration step. Rizzo concluded with a warning that should Pfeiffer appeal the disposition of this grievance, the Local Union should be able to show it had given "as much consideration and support of this grievance as it has to other grievances of a similar or less serious nature. . . ."

On June 29, 1967, the time for submission of the grievance to arbitration expired without the Local Union having taken any action. On July 3, 1967, the Local requested an extension of time for appealing to arbitration, which request was denied by the Company on July 5. On July 11, the Local Executive Board again voted not to take the grievance to arbitration. At the regular membership meeting also held on that date the membership voted not to take the matter to arbitration. Sub-Regional Director Rizzo advised Pfeiffer that arbitration could still be achieved through Pfeiffer filing a new grievance. The Local Union maintains that Pfeiffer declined to file a new grievance; Pfeiffer explains this by indicating that the membership's vote effectively "precluded me from renewing my request and filing a grievance, since the decision was already made that my grievance would be dropped prior to arbitration."

On August 6, 1967, Pfeiffer went to Rizzo and indicated he wished to charge the Local with failure of proper rep-

resentation. Pursuant to this suggestion, Pfeiffer, on August 10, 1967, wrote Regional Director Kitzman requesting that the matter be investigated. Rizzo met with the Executive Board on August 28, at which point the Local President, Greene, took the position that under Article 32, Sections 2 and 6, Pfeiffer's appeal was untimely. The case was processed to the International Executive Board, however, which on March 18, 1968, issued its decision holding that the failure of the Local to process Pfeiffer's grievance to arbitration was "a deliberate abrogation" of his rights. The Committee directed that the Local process a new grievance on his behalf and to make him whole for "all wages lost from May, 1967, until his date of return to work, less any period of time Jim Pfeiffer was sick, less any compensation he might have received in this period. . . ." Local 556 has timely appealed to the Public Review Board.

II.

Local 556's position is as follows:

1. The appeal to the IEB was untimely.
2. Pfeiffer failed to pay his dues from December, 1966, through June 5, 1967, at which point he paid a reinstatement fee and dues in the amount of $51.00. This fact, the Local Union claims, gave it the impression "we were not wanted or needed until he wanted to come back to work."
3. The case was not clearly one which could be won, the Local attorney having indicated that in his opinion there was only a fifty-fifty chance of winning it.
4. Pfeiffer, when president, did not advise the Local Executive Board of his intention to request a leave of absence nor did he actually submit his resignation until January 24, 1967.

5. Pfeiffer never did appeal to the Local Union as per Article 32, Section 2.

The International Union in its answer filed July 2, 1968, takes the position the appeal is one over which the PRB has no jurisdiction, there being no claim, or evidence to support a claim, of fraud, discrimination or collusion with management. Alternatively, it argues that under the facts of this case the Local Union's refusal to process this grievance to arbitration despite the admonitions of the Regional office was indefensible and the Local, having chosen this course, must now make Pfeiffer whole for the loss which it occasioned him.

III.

At the time appellant's request for oral argument was granted, we advised the parties we were withholding judgment as to our jurisdiction over the subject matter of the appeal. We now conclude this appeal is one over which the Public Review Board has been vested with jurisdiction under the Constitution.

Public Review Board jurisdiction over appeals involving the processing of collective bargaining grievances is limited by the Constitution to those cases "in which the appellant has alleged before the administrative arm or the International Executive Board that the grievance was improperly handled because of fraud; discrimination or collusion with management."[4] This provision, the International Union asserts, ousts the PRB of jurisdiction since no allegations of fraud, discrimination or collusion are present in the record, nor is there any independent evidence which would sustain such a position. We think this position will not stand close scrutiny.

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[4]Article 32, Section 9(b) of the Constitution.

It is clear that a local union will not have alleged before the IEB that a grievance was disposed for reasons which were fraudulent, collusive or discriminatory. therefore, the word appellant in Section 9(b) refers only to the situation in which the aggrieved member is the appellant.[5]

Since Article 32, Section 9(b) is not relevant, jurisdiction may be found under Article 32, Section 9(c) providing the Public Review Board with authority to review ". . . any other case in which the International Executive Board has passed upon an appeal from the action of a subordinate body."

Without announcing the basis for its conclusion, the IEB held that the failure on the part of Local 556 to process this grievance to arbitration was "a deliberate abrogation" of Pfeiffer's rights and it therefore ordered the Local Union to make him financially whole. We would hope that the IEB will in the future provide greater illumination. The failure of the International Executive Board to explain its decision is unfortunate for, deprived of its reasoning, we are left to speculate with respect to certain of the issues

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[5]We have considered the possiblity that the word "appellant" as used in Section 9(b) refers to the status of parties at the time the matter was before the IEB. While we think this may have been the intent of the drafters of the Section, such a holding would be strained indeed in light of the language immediately preceding sub-paragraph (b) wherein the reference to the party appellant clearly identifies him as the party appealing to the Public Review Board:

Article 32, Section 9:

> "Any subordinate body or member thereof wishing to appeal from any decision of the International Executive Board or an International Trial Committee may, in all cases, take such appeal to the Constitutional Convention of the International Union. The appellant shall, however, have the alternative of appealing such decision of the International Executive Board or an International Trial Committee to the Public Review Board established in Article 31 of this Constitution in the following cases:"

which in this instance may have been crucial to the resolution of the issue of our jurisdiction.

Grievance processing necessarily involves resolution of questions of policy which are best left to those in whom the Union's membership has entrusted the responsibility for making these judgments. Nevertheless, we think it is our duty to review the record to determine whether there is a basis in the evidence to support the IEB's holding. If there is such evidence, we are obliged to affirm that holding.[6]

It is undisputed that Pfeiffer's request for a leave of absence was granted by his employer. It is likewise undisputed that his letter of request specified no definite period. The application form with the words "or before" x'd out was not signed by Pfeiffer and, therefore, it would be reasonable to assume could not be ascribed to him. Furthermore, the fact that the form itself provided for return "on or before" the expiration date of the leave negates the argument that all leaves of absence must be for two years' duration and no less. Therefore, we conclude there is ample evidence to support the International Union's judgment that the case should have been taken to arbitration.

We recognize, of course, that the submission of a claim to arbitration involves a substantial commitment of the human and economic resources of a local union. A legitimate judgment not to arbitrate some grievances can be made

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[6]We emphasize, however, that we shall defer only to factual findings and policy conclusions. Moreover, deference shall be sparingly exercised with respect to factual findings when they concern issues of whether fraud, collusion or discrimination affected the disposition of a grievance. Finally, since this case is atypical in the posture in which it is presented, it should not be thought that our approach to its determination signals any change in our formerly stated positions respecting review of grievance appeals or that this judgment constitutes a definitive statement as to the duty of the Union in processing collective bargaining grievances.

simply because the exigencies of the situation do not require it when balanced against the expenditures. But when contract violations result in serious personal harm to an employee or group of employees, then the lack of merit in the cause should be clear before the claim is dropped. Here the Union was willing to abandon Pfeiffer's job rights for one year even though, in the opinion of its legal counsel, it had a fifty-fifty chance of winning. There are few cases in which victory is a certainty; under the circumstances, the odds here dictated pursuance of the claim. As stated by one of the representatives of the International Union during the course of oral argument before this panel, the representation of employees is the *sine qua non* for existence of a union — when it ceases to fulfill this function its reason for existence also ceases.

We can quickly dispose of the remainder of the grounds asserted by Local 556 in support of its appeal. There is no merit to its claim the appeal was untimely. While the Local membership voted not to arbitrate the grievance on July 11, 1967, and Pfeiffer did not formally appeal until September 15, or more than thirty days permitted under the Constitution, he made various attempts throughout this period to adjust the matter with the aid of the Regional office. For example, an Executive Board meeting was requested August 10 and held August 28, where the Board again refused to seek arbitration of the grievance. Pfeiffer did not, therefore, simply neglect his case for sixty-five days but he worked actively to achieve his end and there is no evidence that the Local has been prejudiced in any way as a result in the delay of the formal application for appeal.

The fact that Pfeiffer may have been delinquent in his dues is of no relevance. Local 556 does not represent merely its members; rather it is charged under the law with representing all employees in the Bargaining Unit regardless

of membership or non-membership in the Union. While it might have lawfully been able to bring about Pfeiffer's discharge for dues delinquency, it did not do so.[7] Pfeiffer was, therefore, still an employee and the Union was obliged to represent him fairly and honestly.

Finally, it is simply factually inaccurate to state Pfeiffer did not submit his appeal to the Local membership. The matter was appealed to the Local membership July 11, 1967, at which time the membership voted not to process it.

There is no showing that the fact that Pfeiffer may have been tardy in submitting his resignation in any way prejudiced the Union, nor is there any indication of the relevance of this claim to the issues presented.

The consequence of the Company's refusal to allow Pfeiffer to return was the loss of his right to work for one year — a right guaranteed him by his seniority. This was a serious loss indeed and we, therefore, conclude there was a sufficient basis in the facts to sustain the IEB's conclusion that Pfeiffer's grievance should have been arbitrated.

Affirmed.

# # #

CONCURRENCE

Professor Harry W. Arthurs concurring —

I concur in the result reached herein and most of the reasoning expressed in support of the conclusion. However,

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[7]Under the provisions of Article 17, Section 2, it would seem, however, that Pfeiffer should have been issued a withdrawal card by his Local in which case he would not have been a delinquent:

> . . . "Any member laid off from his plant but regularly employed an honorable withdrawal transfer card, or in order to maintain himself in good standing in his Local Union, shall pay dues in accordance with Article 16 and Article 46.
>
> Any member who has voluntarily separated himself from the jurisdiction of the UAW shall be issued a withdrawal card immediately by his Local Union. The above shall not apply to those members who are employed by or officially represent the UAW, National AFL-CIO or AFL-CIO State, County or City Councils."

I regard the result which was reached as having been dictated by the particular facts of this appeal and should not be regarded as a definition in any conclusive way of the nature of the obligation to process grievances. The task of defining the obligation of the Union in processing the grievances of its members shall continue to be developed in light of the circumstances of each appeal.

Joint Trial Exhibit J
— Affidavit of Richard Krolewski —

In the United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, v. I.T.T. Gilfillan, a Division of International Telephone & Telegraph Corporation, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 509, Defendants. No. 76-0730-IH.

AFFIDAVIT OF RICHARD KROLEWSKI

With Attached and Incorporated UAW Exhibit 12

STATE OF MICHIGAN)
)ss.
COUNTY OF WAYNE)

Being first duly sworn, Richard Krolewski says and deposes as follows:

My name is Richard Krolewski. My office address is 8731 East Jefferson Avenue, Detroit, Michigan 48214. I make this affidavit of my own personal knowledge.

I am employed by the International Union, UAW, as the Assistant Director of the Information Systems Department. In that capacity, I am directly responsible for the management, maintenance and programming of the UAW's computer facilities.

These computer facilities, among other things, are used to maintain the UAW's membership and mailing lists. The computer supplies mailing labels used, among other things, to mail the regular issues of Solidarity to the membership. I have examined the computer files, and other business records under my control, to determine whether Clifford

Clayton of Local 509 is on that mailing list, and, if so, how long and at what address.

These records show that this individual is on the Solidarity mailing list, and has been mailed Solidarity regularly at the following address:

Clifford Clayton
1852 W. 76th St.
Los Angeles, CA. 90047

The attached computer print-out, incorporated by this reference as UAW Exhibit 12, shows this to be the case. It also establishes that this individual has been listed at this address since at least August 1974, and probably for a substantial period before that date.

Further Affiant sayeth not.

s/s RICHARD KROLEWSKI,
Richard Krolewski

Subscribed and sworn to before me
this 2nd day of March, 1977.

/s/ ELIZABETH PILOT
Elizabeth Pilot
Notary Public, Wayne County, Michigan
My Commission Expires September 17, 1980

2/18/77 (FRIDAY) CIRCULATION FILE RECORDS 16:23 PAGE 1

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* U77B	U77B
*A6 0509200075383S 58	A6 0509200075383G 50
*CLIFFORD CLAYTON	DERRICK CLAYTON
*1852 W 76TH ST	1714 W FLORENCE
*LOS ANGELES CA 90047	LOS ANGELES CA 90047

Sample of Mailing Label.

JUDGMENT

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT GILFILLAN, A Division of International Telephone and Telegraph Corporation, a Corporation; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, an unincorporated labor organization; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL UNION NO. 509, an unincorporated labor organization, Defendants. Civil No. 76-0730-IH

Filed: May 27, 1977.

The above-entitled matter having come on for trial before this Court on May 3, 4, and 5, 1977, Plaintiff CLIFFORD E. CLAYTON, being Represented by John McTernan of Margolis, McTernan, Scope and Sacks, Defendant Unions' being represented by Matthew B.F. Biren and Lawrence Rosenzweig of Levy, Koszdin, Goldschmid and Sroloff, Defendant ITT Gilfillan being represented by Everett F. Meiners and Kenneth J. Florence of Parker, Milliken, Clark and O'Hara, and the Court having considered all the testimony and documentary exhibits, as well as oral argument, and having made Findings of Fact and Conclusions of Law.

IT IS HEREBY ADJUDGED AND DECREED that judgment shall be entered in favor of Defendant UNITED AU-

TOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW and its affiliated LOCAL 509 and Defendant ITT GILFILLAN and Defendants shall be awarded costs of suit.

DATED: May 27, 1977

/s/ Irving Hill
United States District Judge.

(Certificate of Proof of Service omitted in printing)

NOTICE OF APPEAL

United States District Court, Central District of California.

Clifford E. Clayton, Plaintiff, vs. ITT-Gilfillan, etc., et al., Defendants. Civil No. 76-0730-IH.

Notice is hereby given that Clifford Clayton, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 31st day of May, 1977.

The parties to this judgment, in addition to Clifford Clayton, plaintiff, and their respective attorneys of record are:

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union No. 509
By: Levy, Koszdin, Goldschmid & Sroloff
3550 Wilshire Boulevard, Ste. 1020
Los Angeles, California 90010

ITT-Gilfillan, a Division of International Telephone and Telegraph Corporation
By: Parker, Milliken, Kohlmeyer, Clark & O'Hara
Security Pacific Plaza, 27th Floor
333 So. Hope Street
Los Angeles, California 90071

Dated: June 24, 1977.

Margolis, McTernan, Scope, Sacks & Epstein,
By JOHN T. McTERNAN,
John T. McTernan
3600 Wilshire Boulevard, #2200
Los Angeles, California 90010
Attorneys for Clifford Clayton, Plaintiff

JUDGMENT

United States Court of Appeals, for the Ninth Circuit

Clifford E. Clayton, Plaintiff-Appellee, Cross Appellant, vs. ITT Gilfillan, etc., et al., Defendants-Appellants, Cross-Appellees. No. 77-2756, 77-2763, DC# 76-0730 IH.

Filed and entered April 14, 1980.

APPEAL from the United States District Court for the Central District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is Reversed and Remanded for trial on the claim against the employer only. The judgment dismissing the claim against the union is Affirmed.